SOCIAL DEMOCRACY and DALIT EGALITE

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UNIVERSITY OF MADRAS

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AMBEDKAR MEMORIAL LECTURES 1986-87

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AUTHOR'S PREFACE

A country is free not when it ceases to be a colony but when every member of its polity enjoys human dignity and equal opportunity. In that sense, our great country has miles to go and promises to keep and tryst to redeem. Why? The teeming millions, in their many have-not dimensions, seek deliverance, social, economic and political, even to-day. The Struggle for Independence was also a liberation movement of these tongueless masses at the lowest levels. There was one man who rose from among them, fought for their emancipation and emerged as the father of the Indian Constitution. His name is Dr. Ambedkar, now no more on the terrestrial plane, who by his invisible yet militant presence moves the down-trodden dalits into egalitarian action.

When the University of Madras summoned me to deliver 3 Lectures by way of homage to Baba Saheb Ambedkar, I greeted the offer and, in February this year, gave talks on two consecutive days, which have now been consolidated and published as a book by the University. I must confess that while the theme of the lectures deals with the dalit fraternity and the strategies which the State must adopt to raise the status of the Scheduled Castes and Scheduled Tribes, I have hardly done justice in adequate measure to Dr. Ambedkar or the Seheduled Castes and Scheduled Tribes who are still the wretched of the Indian earth. Dr. Ambedkar is the prophet of India's democratic future and egalitarian culture, of its ethos of samata and karuna. The dalit sector, the socio-economic proletariat are the untapped but immense human resource of the nation. The history of our country which lies ahead will be written as the story of a socialist republic only when the Ambedkar mandate of meaningful fraternity and dalit dignity becomes a reality. If the Lectures I have delivered take the cause forward by one step at least I feel spiritually fulfilled.

I am grateful to the University and the Authorities who have chosen me to deliver the Dr. Ambedkar Memorial Lectures 1988, and hope that patriotic Indians will agree with me in my conviction that India is truly free only when Indians, even the last and the lost, are also free. There is a human indivisibility in the values of life and liberty.

14—10—89 V. R. KRISHNA IYER

LECTURE—I

ESTABLISHMENT OF EGALITARIAN SOCIETY WITH EMPHASIS ON SCHEDULED CASTES/ TRIBES AND WEAKER SECTIONS

So long as the Constitution of India lasts, so long as the struggle against social injustice world-wide survives, so long as dalits, denied their rights but aware of their egalitarian justice, demand fulfilment and fight back frustrations, that long will the human homage to Baba Saheb Ambedkar remain a militant message. It is in this spirit that I derive inspiration from and offer salutations to the memory of a person who advocated the right to personhood of millions of Indians and battled on the side of those whose lot in life was blood, toil, tears and sweat, whose social reality was human indignity and whose spiritual humiliation was to be untouchable to man and unapproachable to God. The relevance of this rebel, the soul of his resistance, the claim of this sword of social justice lies in the never-ending need to wage war against the cult of inhumanity which takes on many incarnations and wears many masks, sometimes of caste, of class, of Cross, of God and gods, of inborn excellence, of even justice and equality and national integrity. Its evil essence, of course, is the subtle subversion of the spiritual commandment that dignity and divinity, and latent creativity are the non-negotiable presence in every person which blossoms when liberative opportunity comes. Dr. Ambedkar sublimely summed up this dynamic equality as 'one man, one value', of which 'one man, one vote' is but a micro-recognition. India to-day, whatever establishmentarians may say, needs Ambedkar every day — not the mortal who passed away in December 1956 but the immortal, indignant interrogation he was, is and will be until the proletariat, in the social, economic, cultural and spiritual dimensions, obliterate the proprietariat who now keep the keys of power as of right through their might. In this land of claques and claptrap, of political babel self-divi-

sively plural, of boneless bhaktas and unconscionable operators for a mess of pottage, of double-speak artistes and deadly vested interests, all constitutional freedoms are under lock and key and democratic rights under lock-jaw in the presence of leader and Party. Mark Twain, the American wit, spoke wisdom for all of us when he observed:

> "It is by the goodness of God that in our country we have three unspeakably precious things: freedom of speech freedom of conscience, and the prudence never to practise either of them."
>
> — Mark Twain.

The three lectures — three chapters delivered here — seek to break the bondage in which a large human sector is still held and to shed some light on the state of national injustice vis a vis categories of Indian humanity whom we describe in comfortable constitutional diction as 'scheduled castes' and 'scheduled tribes'. They are scheduled away out of the flesh of the Constitution so that no one knows the poignancy of harrowing humiliation and socially enforced segregation the victims, who are around 200 million humans, suffer; but everyone merely reads colourless words which smite no conscience and interpret legal texts with lexical dexterity. Far too long have the upper classes hidden the truth of their lies and when the victims of socio-economic exploitation chafe at their chains and ask for justice they are branded violent extremists, and, with that verbal alibi, gunned down legislatively and shot down literally. This shall not be. O Lord, how long, how long shall the agents *adharma* deny in deeds the humanism they deign in words?

A brief biographical flash-back may reveal a few telling events of Ambedkar's life. The social milieu, shot with iniquities suffered by the community into which he was born, is a setting which throws light on the story of Babasaheb and of the crushing realism which ignited his incendiary radicalism. The four-fold 'varnas', as a system, prevailed from the early memory of human history in the land of Hindustan. Chaturvarnya, whatever its rationale, flexibility, mobility and finer genius, if any, became a besetting vice, and a source of die-hard inhibition, savage exploitation, apartheidisation, vocational discrimination,

social suppression, cultural corruption. But even beneath the *shudra* at the bottom came an outcaste class, the *panchama*, antyaja or pariah. They were the lowest in the Hindu system but had numerous subdivisions and graded inter se inequalities. This vivisection weakened the potential and pre-empted the prospect of united action for challenging their sub-human status. Two distinct, distressing strands of degradation, social and economic, often overlapping, afflicted the depressed classes, as they were called during the British days. In Maharashtra, as in the rest of India, the *mlechcha* sector suffered handicaps. Among them was a group of untouchables called *Mahars*. M. R. Russel, quoted by Rajasekhariah in his book on Ambedkar, describes the *mahars* luridly:

> "In Maratha country a Mahar, one of the Untouchables, might not spit on the road lest a pure-caste Hindu should be polluted by touching it with his foot, but had to carry an earthen pot, hung from his neck, in which to spit. Further, he had to drag a thorny branch with him to wipe out his footprints and to lie at a distance prostrate on the ground if a Brahmin passed by, so that his foul shadow might not defile the holy Brahmin."

B. R. Ambedkar was a *mahar* by birth and was genetically conditioned, as it were, to tear down this unjust edifice. Born in April 1891 as the son of Ramji Maloji Sakpal, fortunately a subedar-major in the army, Bhimrao Ramji Ambedkar had a kindlier fate. During that period, untouchables had access to the armed forces altho' by Government Order of 1892 recruitment of *mahars* was banned. Writes Rajasekhariah:

> "Till then education was complusory for the children of the military servants. Here was the opportunity for Ramji Sakpal to give education to his children. But he retired from service when Bhimrao R. Ambedkar was hardly 2 years old. Still Ramji was not deterred from his resolve to educate his children, and under grave hardships and handicaps put his son Bhim into the village school of Dapoli and later moved to Satara town. It is here that Ambedkar, even as a young boy, had the first painful experience of the stigma that was attached to his caste. He was not allowed to sit in side the classroom along with other boys. He had to sit outside the classroom and teachers would not touch him or his books as they believed it would defile their person."

Such insulting environment would have made even a fiery revolutionist a silent protestant in those days of communal submission, but Ambedkar was made of sterner stuff and his stars had decreed a different course. After a course of secondary education in Bombay, Bhimrao fought up his way to higher studies and self-learning in Sanskrit. The ruler of Baroda, Sayaji Rao Gaekwad, encouraged Ambedkar to make a quantum jump in education. Thus the Untouchable Ambedkar reached Columbia University, accomplished scholarship, versatile fashion. From there, across the Atlantic Bhimrao reached London took his Doctor's degree in Economics and eventually became a Barrister in Gray's Inn. Back home, Bhimrao became the Military Secretary to the Gaekwad of Baroda, but the slings and arrows of outrageous fortune, belonging, as he did, to the Panchama brood, afflicted him appallingly. Detested and disowned, humbled and dehumanised, Ambedkar made a diamond-hard resolve to wage unwavering battle against the social inhumanity of the elite castes on the inferior species. He completed his studies which he had left half-finished in London and returned to India to set up practice as a barrister — a 'poor man's barrister'. He became a leader of the depressed classes who found in him a fearless spearhead rare to come across. His struggle to establish egalitarian status began in 1924 when he founded the "Council for the Welfare of the Outcastes" *Bahishkrit Hitakarini Sabha*). Ambedkarism sprang to life. The one non-negotiable quality of his soul was his matchless courage, blended with militant intelligence supportive of his value system, regardless of whether it was the Congress or Gandhi or Nehru who were the targets of his attack. This aggressive opponent of casteist Hinduism was willing to be a constructive realist even to the point of becoming a Minister in the Nehru Cabinet and compromising meliorist, in a principled way, to save Gandhi's life at a critical hour of his fast which ended in the Poona Pact. Dr. B. R. Ambedkar had filled many offices, being a legislator at various levels and had done great service to the cause of social justice, but above all, he was the founding father of the Indian Constitution, the Mahar Manu of Bharat and the most independent man of political action with a rebellious vision to demolish the status quo ante which denied the basics of human rights.

My focus is not so much on the biography of this swordsman of social justice but the story of India's millions made up of

scheduled castes and scheduled tribes, a curious, colourless, ordourless constitutional euphemism. We are concerned with hard history. Some men mobilise fellowmen to make history. Others are so identified with dynamic movements that they themselves are integral parts of history. Ambedkar was history in the making, a strong catalyst in the dialectics of historical materalism. Some years ago, speaking on Ambedkar, I had touched on similar note. What I said then is still my thought and so I repeat myself:

A single man, once in a long while. spans into an era, a lonely soul stirs into action a suppressed community; a slumbering people's process of aware liberation is personified in a solitary leader. The Ambedkar phenomenon filled the Indian stage in the dramatic struggle to salvage the nether bracket to the surface.

Dr. B. K. Ambedkar wrestled like a Bhima against inhuman inequality, for the deliverance of the panchama proletariat and used politico-legal strategies to accomplish his mission. He was a daring compound of political fighter for the fallen fifth of Indian humanity, legal luminary who crossed political swords with the Mahatma, able administrator who served in government under the Raj and in the Republic, unremitting opponent of caste-charged Hinduism who flowed with his fellowmen into the nirvana of Buddhism, and, finally, distinguished jurist and Chairman of the Drafting Committee of the Indian Constitution, who shaped that monumental document for the social revolution of a decolonised nation. His mortal span ran between budding as the fourteenth child of bhajan-chanting parents in 1891 and fading finally as anti-Hindu Buddhist in 1956. Born as *mlecha* but married to a Brahmin, called to the bar as barrister but practised politics, educated in the Columbia University proximate to Harlem, inspired by the American proposition of equality and applied it to the Indian untouchability. Ambedkar was all sound and fury against social injustice. His weaponry was legal-political, his anathema Hindu caste exclusivism and his ambition social democracy.

My subject for these Memorial Lectures bears upon the unfinished but on-going mission of that grand rebel, in the updated conditions of today. His life was a flaming forge, his commitment was to free the ancient unfree, his economics, law and

politics were welded into a constitutional militancy and geared to a social emancipation movement. In the last analysis, his constitutionalism toned down his methodology of social liberation, law-breaking or jail-going not being his penchant. Many hold with Aristotle that 'to live by the rule of the Constitution should not be regarded as slavery but rather as salvation'. Was that this patriot's tragic law-abiding failing?

No man, however good or goofy, is static all through life. We all change, grow or decay. Ambedkar also developed from stage to stage although his primary obsession and aspiration — the bee in his bonnet — was the salvation of his submerged fellowmen. If we may, according to academic vogue, periodize the public life of Ambedkar, perhaps the preparatory phase of his life was 1918 to 1928 when he equipped himself in law, and economics, but at Mahad led the satyagraha struggle for securing the human right of drinking water from public lakes to untouchables and continued to battle for human dignity, equality and liberty by asking for basic facilities for fellow achuts. The second phase of life from 1929 to 1936 gave a shift in constitutional strategy for his championship of the social underdog in the bona-fide, perhaps unsound, political belief that separate electorates for the untouchables would end their thraldom. For him the intractably oppressive Hindu social order could neither be broken nor bent and to quit Hinduism was the social, and to secure separate electorates, the political, hope of overthrowing the inherited burden. Followed, in the third period (1937-46), the purely political organisation of the Indian Labour Party to fight elections and be in office or opposition. His constant motivation was liberation of the down-graded dreg of the Hindu fold. In his most glorious and fruitful spell, he became Law Minister in Free India and simultaneously Chairman of the Drafting Committee of the epochal Constituent Assembly, toiling to level up, through the law of the Constitution and other humane legislations, the lot of the lowly-born and menial masses and of dependent womanhood. In a mood of constructive maturity he abandoned the divisive demand for separate electorates, barricaded, through the articles of the Constitution, and built, through legislative measures, social equality for the trampled weak. All through life his constituency was the weaker sections in his country, his objective was to raise the semi-slave to a new dignity and his achievement was the

catalysis of the egalitarian promise that India, that is ours, holds out through law and good government to the lowliest and the lost. In rural India caste and class largely overlapped, untouchables and proletarians were aliases, and so a casteless community and classless society, modernised and educated, became Ambedkar's ambition. To sum up, the profound thrust of this 'symbol of revolt' was social democracy and the personal impress he left on the legal structure was social justice. This beautiful bequest must be transformed into sociological jurisprudence-in-action and the politics of the social have-nots. History would forgive Ambedkar for his grave errors of political judgement at ominous stages, since his spiritual alibi was that, to the end, he was always morally, sometimes madly, discontented with social vices, practised with scriptural sanction, highbrow hypocrisy and legal connivance.

Let me repeat for emphasis the credal core of this Mahar Manu, as he has often been called. Dr. Bhimrao Ramji Ambedkar was not just a fighter against the barbarity of untouchability and low-born segregationism nor, indeed, a Law Minister and Chairman of the Drafting Committee of the Constitution who struggled for a rule of law afire with humanist justice in a feudal-colonial society, operating within the parameters of a bourgeoise happy for centuries with a caste-culture and medieval structure of subordination and indignity. He was a man with a mission of liberation of man, a single soul thunderbolt which struck at the roots of human bondage, a social militant with the vision of a society of egalitarian compassion, with new dimensions beyond the economic diagnosis of Marxism and political liberty of Mill. The full measure of this indignant, frustrated and iconoclastic humanist is an untold epic because he was against the Establishment, and the Establishment writes the story of our times, moulds the conditioned reflexes of our thinking and fills the ink in the pens of even our highbrow historians. Doing justice to Ambedkar's contribution is therefore more than producing a factual biography of a public figure. It is the projection on the canvas of India of a sharp critic who could suffer no hypocrisy vis a vis marginalised categories and would battle all alone for the holistic humanism of one man, one value. The political militant argues for free speech, right to dissent and elected government; economic radical advocates equity in property and distributive justice based on

each according to his needs; the social protestant tears down the discriminations rooted in birth, not worth, violating the dignity of individuals and groups by cultural vulgarity and biological blaspheme. Ambedkar was all the three rolled up into one but with heavy accent on the social essence of personhood.

Social Justice and the World Human Order

The new world order which has burgeoned after the second World War reflects the human rights concerns and commitments which had striven for expression during anti-feudal, anti-colonial struggles. The grave crisis, which gripped mankind with fascist creed and Nazi cult on the rise, shook the world into a realisation of the need for inviolable parameters if human life in dignity was to survive. Each country and age had its own peculiar cultural, social, historical, and geographic and demographic circumstances. Third World countries presented pathetic pictures of large victim groups denied for long those fundamental freedoms which make up the worth of the human person. Colonial and newly liberated nations had dual worlds within. Chill penury, social squalour and conditions of torture sub-humanised large chunks of their population. These afflicted communities have been called the fourth world within the Third World. Even national liberation movements cognised this great inner contradiction of fighting for independence of the nation as a whole while trampling under foot weaker communities and treating them as non-persons. Sensitive humanists, social reformers and leaders of emancipation from within the handicapped sector often organised radical pressures, protestant upsurges and massive, ideologically engineered, broad-based campaigns, militantly demanding human rights, equal opportunities and life in dignity.

India has had an ancient heritage of social injustice with indigenous nationalities and sub-nationalities reduced to slavery, serfdom, bonded labour and degrees of privation based on inferior birth and other unhappy happenstances. It is a paradox of history, a la Indians of America, that the very original occupants of their native land, the adivasis, are exiles from the banquet of life, roofless and roaming, destitute and desperate, labouring to build for others but themselves unorganised, exploited, marginalised and even outlawed. The five-star culture belongs to the higher castes and the ill-starred torture is the horoscope of the original

Indians. The law itself, despite its profession of equal protection, lends learned, promotes the looter and punishes the little man. Says an anonymous poem.

"The law locks up both man and woman
Who steals the goose from off the common,
But lets the greater felon loose
Who steals the common from the goose."

And Anatole France put it with sardonic bluntness:

"To disarm the strong and arm the weak would be to change the social order which it's my job to preserve. Justice is the means by which established injustices are sanction."

The fact is that many millions of humans, under the Indian Sun suffer unspeakable social and economic handicaps and have no political tongue to argue their case.

"If thou didst ever hold me in thy heart,
Absent thee from felicity awhile,
And in this harsh world draw thy breath in pain,
To tell my story."

— SHAKESPEARE

The Dalit — Antyajas of India: A Flash Back:

The early story of the Scheduled Castes and Tribes needs to be set out briefly to knock out the terrible lie that they are genetically inferior, that they have less talent and 'untouchable' heredity, and that all militancy for equality for this chunk of homo sapience is misplaced as it will spell sacrifice of excellence to the detriment of the nation's advance. The pungent retort to this phoney theory is given by Ambedkar himself.

"The Hindus wanted the Vedas, and they sent for Veda Vyasa who was not a caste Hindu. The Hindus wanted an epic, and they sent for Valmiki who was an untouchable. The Hindus wanted a Constitution and they sent for me".

The poetic rebuke to the caste-conscious herrenvolk theorists was administered by Rabindranath Tagore:

"Proud castemen of my unfortunate country!
Throw aside your pride of Caste —
Lest on your own unwilling head
Should be heaped the burning insults
That you now shower on others.
You have deprived the outcasts
Of the common rights of man,
With your very eyes
You have beheld their misery,
And yet you have refused to take them to your heart—
But remember, please do remember!
— Some day you shall have to be
The equal of them all in ignominy."

— Gitanjali.

Some of the leaders of the *bhakti* movement like Rai Das, Kabir, Nandanar and Pakkanar, came from 'untouchable' castes. The conquered tribes, when the aryans came, became broken off segments from their own original stock and lived outside the village. Ambedkar called them 'broken men', because they were the watch and ward people dwelling in the outskirts. A study of indology, combined with anthropology and sociology, brings out the historical reality that the lowest layers of *shudras* and the residual panchamas were not meaner by birth but branded untouchable and outcaste for various extraneous reasons. Social, economic, cultural, religious and political exclusions, subjugation and habitational segregation, dress and diet inhibitions were imposed on various original categories of inhabitants some of whom were assimilated but others remained hostile and paid the social penalty of *panchama* out-of-bounds status.

Among the most despised communities of India were the *chandalas*. But were they moral cripples, mental retardates and physical wrecks? Not at all. They were manly rebels, overpowered by the aryan settlers or banished from the banquet of better life for the sin of non-cooperation with conquerors — a Gandhian virtue, perhaps. This hypothesis is probabilised by Prabhat Mukherji's study titled "Beyond The Four Varnas". Who were the chandalas, that most outcast category? He sums up thus:

"Candāla category was as if the last refuse of all unwanted people. This group not only kept on swelling in number

but also consisted of diverse elements. Possibly, therefore, the ātavikas also, like others, merged with the candālas after sometime, and the former lost identity in due course. This is further strengthened by the fact that later most of the other social groups lost their names and identities but not the candālas. This is supported not only by the structural composition of the candālas but also by the fact that unlike other eponymous casts groups like rajakas carmakāras, etc. Candālas indicate neither any specific occupation nor any definite occupation was prescribed for them.

Significantly, this method of mixing diverse peoples under a common label and then giving them the lowest position in society is not new. Indian social system, in spite of its rigid structure, developed organizational 'devices' for obsorbing unwanted and 'alienated' groups of people, which also acted as 'safety valves'.

"For instance, initially, the dvijas occupied the central position, and the Sūdra varna was the lowest and the 'safety valve' accomodating the non-Aryas, Dāsa/Dasyu and other conquered peoples. Whoever could not be included under the three upper varnas came to be known as Sūdra (Bhandarkar 1940: 5). Still the Sūdras were considered a part and one of the four varnas.

Then the anomalous pañchama appeared with its varying interpretations. Whenever the varna or caste identity of a group was open to doubt, it was included under pañcama (Macdonell and Keith I. 466-68). Sometimes the nisādas (including the 'mixed-varna' children), or the candalas, or the Jainas were considered pañcama (Sangave 1959: 105).

"Now comes the turn of the candālas. To begin with, it was a specific one like any other group as identified by Ptolemy and also as mentioned in the texts. But it later became a generic term embracing many other social groups and individuals which is supported by its ever-changing and ever-expanding scope. It seems as if the orthodox Hindus were faced with the problem of defining or identifying this uncertain group. Therefore, all the 'dregs' of the Hindu society were grouped together under candāla!"

''Presumably, the candālas formed an influential group, probably powerful too, among all the forest-dwellers."

"They had their own identity in the sense that they had their language, the candāla-bhāsā (Jat. 498).

"The candālas must have been a care-free people. They played a lute which came to be known after them, the candāla ballaki (Jat. 531, 498; Monier-Williams 1951; 383; Oppert 1972; 32), and only they knew the art of blowing a particular type of flute."

"We have noted earlier that whoever cooperated with the Aryas initially were accepted within their fold. But the ātavikas definitely and the candālas probably did not.

Probably, the situation would have been different if they were left to themselves. But they could not live in isolation for long. To the growing political and economic influence of the ruling group they had to surrender. With the scope of arboreal economy becoming restricted and encroachment on their land taking place, the candālas (and others too) had to come out of the seclusion, a parallel case noted recently about the Sāntāls. Deprived of their habitat and livelihood, some of them accepted the 'munificence' of their 'masters'; but others did not. Even very recent history shows the candālas as a proud group of people, who zealously guarded and maintained their separate identity and freedom as long as possible.

And, probably, it was not easy to bring them under control. It was the 'rebels' who suffered most, because the erstwhile enmity with and insubordination of the ātavikas in particular and of candālas in general was neither forgotten nor forgiven. When they were brought under subjugation eventually, they were neither incorporated into the main economic activity prevailing at that time, that is, agriculture nor into any other form of production in society. Only unskilled, unproductive, lowly and menial jobs were assigned to them. Thus, when they were forced to surrender it was not clemency they received. Instead, they were treated with utter contempt and were segragated as a residual category of people to be employed as and when necessary."

A dialectical study of Indian history ancient, medieval and modern, probably justifies the conclusion that untouchability,

unapproachability, occupational meniality, stigmatisation in the matter of food, mess, worship, marriage and even ownership of property were the penalties of political protest against conquests, not a divine displeasure visited punitively upon ill-born, ill-starred, unworthy communities banned from civilised life. They are not any more inferior to the casteocracy of India than Indians were to the Whites who ruled India from Whitehall. The wheatish brown pretenders to higher stations by birth are unblushing engineers of an unjust social order blaspheming the native inhabitants, largely dark-skinned but depressed and suppressed into sub-human status contrary to the canons of our own cultural heritage. They are the dalits now in despair and, if justice is denied for long, may leap into a panther temper to demand equal share in the national cake because egalite is their birthright.

Ambedkar was the expression of the angry revolt against the savage status quo ante. Gandhiji, less rebellious but equally firm on the abolition of the sinister sin of insult and injury against the 'traumatised tenants' he called harijans — a hated word to-day because of the hypocrisy of its use. Vivekananda hurled spiritual — secular missiles against the brahminical establishment for this scourge of barbarian malpractices against these labouring classes or social proletarians. Nehru condemned, with humanist fury, the terrible injustices against this humble secter. Many social and religious reformers, outsiders with disturbed consciences, strove hard for the uplift of these depressed brethren equal in the eyes of God. But Ambedkar, as explosive insider and expropriated mahar, was not a mere mendicant for ameliorative reform, was more than spiritually indignant at this godless godism, was more fiece in his annihilative antogonism to this inhumanity of man to man than Jawaharlal's socialist diagnosis or Communists' marxian dialectics. He used all strategies to declare war against this 'bar sinister'. from outside as a neo-Buddhist movement and from inside as constitutional challenger of the sanctified adharma.

To know the historical process of the formation of Scheduled Castes and Scheduled Tribes is necessary to destroy the boast of superiority of the forward castes measured by 'merit'. Caste, in its current stratified. soulless incarnation, is a national enemy and so, the Constitution and the stalwarts of the swaraj struggle desiderated a caste-free social egalite.

The major political pathology threatening the integrity, solidarity and stability of India is the die-hard caste system and corrosive communal consciousness with divisive potential; and the most incurable wound is the exclusion of that depressed and desperate Dalit sector which is a substantial number. Nehru in his Discovery of India has perceptively observed:

> "But the ultimate weakness and failing of the caste system and the Indian social structure were that they degraded a mass of human beings and gave them no opportunities to get out of that condition — educationally, culturally or economically.
>
> It led to the petrification which became a dominant feature of India's economy and life.
>
> In the context of society to-day, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive, and barriers to progress.

The Indian Constitution has emphasised the unity and integrity of the nation as a paramount value and insisted upon equality and dignity as a Constitutional fundamental. In a powerful endeavour to produce a casteless society the Constitution has promised equal protection of the laws to the lowliest and the lost, forbidden *untouchability* and made free access to all places of public resort a fundamental right — perfect on paper! Nevertheless, Operation Agnivesh, the Puri Acharya and the lunacy and the untouchability syndrome are with us, whatever the Protection of Civil Rights Act, 1955 and the Constitution may proclaim.

Every sixth man in the world is an Indian. Every fifth man in India is a Harijan or Girijan. Although the nation has advanced in material development and democratic conscience, the fact remains that the untouchables, drowned in illiteracy and grinding poverty, social squalor and demeaning occupations, continue to be a bleeding blot on India's human homogeneity. Indeed, the culture of India is outraged by the persistence of the '*untouchable*' factor. Scheduled Caste consciousness is hotting up and a militant dimension to Indian politics from these oppressed and suppressed people is developing. After all, the Panchama is asserting his worth and equality.

While all of the Scheduled Castes are not *untouchable*, one-sixth of India is still tarnished as *untouchable*. This terrible crime must end. But how? In ancient India the Charwakas challenged the very authority of the Vedas. The Buddha questioned Brahmana supremacy. Many Bhakti movements were founded by untouchables. Ramanuja, by a revolutionary technique, converted the bhangis into Brahmins. Advaita declared the divinity and unity of all humanity. With all these forces at play, the caste heirarchy displayed structural rigidity thro' the four-fold Varnas. The untouchables of India sank to the lowest level of stagnation. Ambedkar and Gandhi, the socialist thinkers and social reformers fought for the human rights and egalitarian status of the Scheduled Castes and Tribes. The problem of the untouchables, which disturbed the national leaders, resulted in protective discrimination for them under the Constitution. However holy, flexible and pragmatic the origin and evolution of the system of the Varnas once, to-day it is an imperative that a casteless society free from 'untouchability' is the scheme of our social order. All political parties are agreed on the abolition of this "bar sinister". Gandhi firmly declared:

> "What I want, what I am living for, and what I should delight in dying for, is the eradication of untouchability root and branch .... It is in order to achieve this, the dream of my life for past fifty years".

However, one facet of the untouchability issue has not received sufficient attention and that is the historical enquiry into the genesis and development of this pernicious Indian phenomenon from the days of the Vedas through the later centuries. Various hypotheses regarding the origin and passage through the ages of the untouchables have been propounded. But no serious and methodical investigation of the *asprisyas* in the caste context, has been undertaken.

Untouchables belong to the lowest rung of the Sudras or are the *Panchamas* beyond the pale of the *Varnas*. Any historical materialist, informed by dialectics, will appreciate Mukherjee's analysis. Apart from a useful introduction furnishing an illuminating perspecive, any serious scholar who delves into Rig Vedic times, even pre-Vedic society will agree that the Aryas came to India, inhabited the territory, has brushes with the indigenous population, came to terms with them or even beat them back.

"From the evidence in the RV we find that besides the RV people there were other autochthonous groups in society. Their names appeared gradually in increasing numbers as and when the RV people came in contact with them. Simultaneously, we note that their relative position vis-a-vis the Aryas underwent changes over time". (Page 17 of the book.)

It is interesting to note the historical developments where the the Aryans met with Dasus/Dasas and other grops like Asuras and Rakshasas. With meticulous scholarship and speculative research and, sometimes, with tedious and obscure details, the author takes us through the ancient period when the Aryans grabbed land and wealth. Indeed, only a student deeply attracted to the historical emergence of the Varnas on the Indian landscape may be inclined to go into the dull narration of the Indus Valley civilization, the consolidation of Aryan rule the evolution of a social structure and the establishment of aryan rapport with the natives achieved through appeasement or intimidation. The 'dark-skinned' and 'snub-nosed' people and other friendly autochthonous groups were absorbed or at any rate brought into the system. Apparently, pre-Aryan communities had a culture of their own and the Aryans, by slow process, included or resisted autochthonous groups and hostile people. Says Prabhati Mukherjee:

> "By piecing together all the information obtained from the Vedas we can have a comprehensive and also a significant picture of social/economic units in society. Specialization in occupation is noticed in apparently synonymous but opperationally different terms. Specific groups are mentioned under the general terms of carpentry, jewelry, weaponry and under hunting. Another noteworthy feature is that the people of mainland seem to have established communication with the forest-dwellers as mention is made of people like deer-hunters, fowlers, etc." [Page 25 of the Book]

Indian society was stratified into four Varnas but the Sudras were at the bottom. Then came the Panchamas about whom also there are reference. The Chandalas, perhaps, belong to the total rejects in society. The untouchables were those categories which suffered the most *mlecha* features, occupational, social and other.

"The candalas were the lowest and the worst of all human beings (Jat. 498; MS.X. 16, 26). Strong hatred for them is expressed not only by the Brahmans but in the Jatakas as well. For instance, the sight of candala was inauspicious (Jat. 377), and daughters of a sresthi and priest washed their eyes after having accidentally seen a candala because he was not fit to be seen (Jat. 498). They were considered low by caste, and two candala boys lamented over the blemish and inferiority of their caste (Jat. 498). A disciple was ashamed to acknowledge publicly his teacher who was a candala (Jat. 474). At the same time we find learned candalas (Jat. 497), and when they became Buddhist monks they were treated as equals, for monks have no caste (Jat. 487)." [Page 63 of the book]

One thing is clear, the untouchables included forest dwellers and others who lived beyond the village or near grave-yards.

"Among such people, as we have already noted, were the nisadas, kiratas, sabaras, pulindas, atavikas, lubdhakas, matangas, candalas, svaganins, svapacas, etc. Of them, we would concentrate particularly on candalas and svapacas as they were condemned by all." [Page 64 of the book]

What is important is that the Aryans established a communication channel with some of these groups of people like *Nishadas* and *Kiratas*. For instance, Ekalavya and Guha were Nishadas. But what a shock and shame that our cultural heritage had *chandala* groups!

"But who were then the candalas? The general consensus is that the candalas were the same whom Ptolemy described as a tribe known as kandaloi. In this context, one may quote Ambedkar who mentioned 'Broken Men' as belonging to the group of the untouchables (Ambedkar 1969: XIV. 99). He had probably in mind the kandaloi of Ptolemy as one of such broken tribes. But the Hindu, rather Brahminical, tradition differs from this view." [Page 91 of the book].

"The fifteen subdivisions of candalas are mentioned, of which madiga (for domba in Maharashtra) is one (Oppert 1972: 156n); and sixteen castes in a village are also treated

as candalas in the matter of touch, sight and speech (Kane 1953, IV. 115). There is also the suggestion that the present-day Gonds are the descendants of candalas (Oppert 1972; 156 n. 51). Furthermore, it was not by birth alone but by deeds also that one could become a candala (Hutton 1951: 150). Because of his misdeeds a king was made a candala by his subjects. Violation of prevailing norms, be that in marriage, religion, commensality, occupation or deeds resulted in making a particular person or group candala. Because of this, the definition of candala kept on changing and adding more and more names to it as time went on. Thus, what was a specific ethnic tribe at one time became a general term over the years (Bose 1942. I. 436, 438-39).

As to the functions of candalas, there was a general agreement. They worked as hangmen of kings, carried corpses of those committing suicide or those having no relatives, and as sweepers of village streets. From the Mahabharata we note that candalas were connected with work at the crematorium and collected the clothes of only those whom they hanged or of those who committed suicide or had no relatives (MS. X. 56)."

The erudite survey of the story of the untouchables over the ages drives home the appalling injustice imperialistically inflicted on a proud people by aryan conquerors. Authentic Indology, anthropology and sociology justify the dialectical conclusion that history demands of the Indian Republic the fundamental justice of dynamic equalisation of status and opportunity to our dalit brothers and sisters because it belonged once and belongs now to them. To challenge the legitimacy of this egalitarian thesis is to impeach the Constitution itself!

Call them outcastes, brand them as bastards, revile at them as unregenerate, but the truth remains that Candālas, and many other like categories, were too powerful to be conquered. Of course, the Hindu orthodoxy rejected with them as the dregs of society. Nevertheless, these groups of forest dwellers and others had an identity, a language, an art and culture and even superiority in several aspects of life. One may conclude safely that the untouchables of yore were an important conglomerate segment of Indian society resistant to the ruling Aryans. Those whom we

now call Scheduled Castes and Tribes pejoratively are the Indegenous Indians whom the ancient aryans could not enslave but over yawning centuries have been victimised as the marginalised antyajas.

The Constitutional Parameters and Balance Sheet of Performance:

Beyond all argument, the Constitution itself has recognised two fundamental factors. Firstly, the title to equality and the strategies of equalisation implicit in and necessary for the attainment of group equality where grave disparity is the social reality. Secondly, the egalitarian laws shall not sleep as printed paper but shall be dynamic jurisprudence in action lest the statute book be stultified by non-implementation. To frustrate the Social Justice promise of the Constitutional Preamble by omission and commission is to play truant with truth and justice. Art. 38, which is the human essence of our democracy in social locomotion, reads:

> "(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
>
> (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

This destination cannot be reached by bare declaration but summons all our national determination and collective energies because the dreadful reality, vis a vis the harijan-girijan fraternity, convicts us of culpability by denying in practice the dalits of basic human rights. Tolstoy once said:

> "The abolition of slavery has gone on for a long time. Rome abolished slavery, America abolished it, and we did, but only the words were abolished, not the thing."
>
> — Leo N. Tolstoy:

Constitutionally, kuberas and kuchelas, bhangis and brahmins, mlechchas and maharajas are equal. Historically, or raci-

ally they are not superior and inferior; politically, so long as the ballot prevails, they have equal worth at the polls. In every dimension of national life they prove by performance the proposition: one man, one value. Given the chance, of course. But clinically, we discover to our horror that around 200 million Indians are unfree in life, whatever the law may say. If law is what law does, for the dalits the law is dead. If justice is what justice does, for the dalits injustice is writ large in life. There is some exaggeration in this assertion, of course. But, as Oscar Wilde has put it, moderation is a fatal thing; nothing succeeds like excess.

Let us look at law and life vis a vis dalits and how they fulfill the nation's integration thro' human homogenisation. First, the law of the Constitution. It makes a perceptive distinction between backward classes or weaker sections on the one hand and the Scheduled Castes and Tribes on the other. To be backward is bad enough but to be the lowliest and the lost is a negation of democracy. Backwardness itself has many afflictive features which may overlap and also be separate facets. Educational, economic and social handicaps cannot be lugged together nor can distressing degress of disparity ignored when remedial strategies are to be devised. Standard treatment of all backward groups, including the visibly most victimised, is unscientific and prejudices the cause of the SC./ST. Indeed, if principled realism should navigate our course towards equal opportunity and casteless society, backwardness cannot but be sensitive to the distinctive social and economic pathological variations within the backward and dalit categories. To put it differently, social debasement and economic impoverishment are often cousins and 'thin partition do their bounds divide' but to roll them into a single group is a remedial blunder which obfuscates the special needs of the dalit brothrehood. Pollution and Poverty, to put it symbolically, share and differ, with religion being a sharpening factor. That is why Blacks of America or even the (Red) Indians, Maoris and Hispanics have problems of privation and injustice but dissimilar to the poignancies of the Scheduled Castes and Tribes.

A common Marxian mistake confuses the issue if every problem of discrimination is simplistically attributed to economic factors. Perhaps, it is a misreading of the Marxist analysis,

because the materialistic conception of history merely emphasizes that *ultimately* the determining element in history is production relations. Other factors do play substantive roles in shaping human relations and sharpening human contradictions. Viewing the problem of backward communities within the Hindu fold critically, we realise that social stigmatisation, as an inherited misfortune and as applying to whole groups and sub-groups, is a peculiar cultural process rooted in religion. Dr. Ambedkar hit the nail on the head when, in his final address to the Constituent Assembly, he emphasised the complete absence of social democracy in India as distinct from political democracy.

> "On the social plane, we have in India a society based on the principles of graded inequality which means elevation of some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up." [KEER, D. — Ambedkar: Life and Mission — Page 412]

It is an irony of fate that nearly 40 years after, that social contradiction, as a die-hard phenomenon, stands in the way of social fusion and fraternisation. Caste pluralism still flourishes, and even within the (SC./ST.) sector, numerous divisions with degrees of untouchability still survive. The vintage *varna* value, embedded in Hindu praxis, defies the zeal of reformers and philosophers and the emphatic text of Constitutions. Only a radical

and humanist shift in our value-set can tilt the scales or obliterate the unjust social order. What I mean by paradigm shift is aptly expressed by Marilyn Ferguson in "The Aquarian Conspiracy":

> "A paradigm is a scheme for understanding and explaining certain aspects of reality."
>
> "A paradigm shift is a distinctly new way of thinking about old problems. For example, for more than two centuries, leading thinkers assumed that Issac Newton's paradigm, his description of predictable mechanical forces, would finally explain everything in terms of trajectories, gravity, force. It would close in on the final secrets of a 'clockwork universe'.
>
> But as scientists worked towards the elusive ultimate answers, bits of data here and there refused to fit into Newton's scheme. This is typical of any paradigm. Eventually, too many puzzling observations pile up outside the old frame work of explanation and strain it. Usually at the point of crisis, someone has a great heretical idea. A powerful new insight explains the apparent contradictions. It introduces a new principle...a new perspective. By forcing a more comprehensive theory, the crisis is not destructive but instructive." [P. 27]

Ambedkar was a rebel who brought in a new paradigm of social democracy annihilating caste, the root evil.

A paradigm shift is a *must* if the Indian village is to be rid of the pollution factor, apart from the poverty factor. Even if it be true that Gandhiji and other reformers condemned caste as an aberration, there were others with progressive airs justifying the existence of down-graded castes on the theory of Karma. Social hierarchy, institutionally structured creates iron curtains which withstand the Constitution. As between Gandhi and Ambedkar the more forthright was the latter, the former being against untouchability and the sub-human status of Harijans but still not condemnatory enough against the root cause of Varna theology.

While economic adversity afflicts a whole range of people, brahmin, shudra or panchama alike, why, even other communi-

ties, the peculiar social pollution syndrome cuts deeper than poverty does and humiliates the members with mlecha indignity, occupational baseness, religious unapproachability and what not. Social privations, searing the soul of our culture must be identified by differential diagnosis and cured them by appropriate therapeutics. A poor *savarna* is socially more comfortable than a rich *avarna*. True, of course, quite often the proletariat takes in both the poor simpliciter and the Scheduled Caste indigent. If our goal is establishment of an egalitarian polity in all its facets we must go beyond economic dialectics. Dr. Ambedkar vividly saw this point and turned his fire power on the Caste factor which vivisected Hindu, why Indian, society.

Another important perception Ambedkar high-lighted was the difference between social reformers who strove to alleviate Hindu injustices and the dynamic rebels who advocated abolition of the Caste system itself.

Early in the history of Indian Independence there were two trends, one political, one social. "The Political Reform Party supported the National Conference and the Social Reform Party supported the Social Conference". Leaders like Tilak emphasised political liberation but acquiesed in the Caste system. Even when they fought for Hindu social reform they did not give battle to the basis evils of caste hierarchy and outcaste perdition. Let me quote Dr. Ambedkar to bring out his critique of the political leaders and his dissatisfaction with their indifference to the burning injustices which ostracised whole communities from the Hindu fold :

> "The speech, delivered by W. C. Bonnerji in 1892 at Allahabad as President of the eighth session of the Congress, sounds like a funeral oration at the death of the Social Conference and is so typical of the Congress attitude that I venture to quote from it the following extract. Mr. Bonnerji said :
>
> 'I for one have no patience with those who say we shall not be fit for political reform until we reform our social system. I fail to see any connection between the two ... Are we not fit (for political reform) because our widows remain unmarried and our girls are given the marriage earlier than

in other countries? because our wives and daughters do not drive about with us visiting our friends? because we do not send our daughttrs to Oxford and Cambridge?, (Cheers). [ANNIHILATION OF CASTE By Dr. Ambedkar—Page 25]

Any incisive social scientist — and Ambedkar was one, — would view social degradation as possessing an independent existence apart from economic deprivation. Copious illustrations have been given by this Dalit Bheema, if I may so call him in his 'undelivered' address Annihilation of Caste. For instance:

"Under the rule of the Peshwas in the Maratha country the untouchable was not allowed to use the public streets if a Hindu was coming along lest he should pollute the Hindu by his shadow. The untouchable was required to have a black thread either on his wrist or in his neck as a sign or a mark to prevent Hindus from getting themselves polluted by by his touch through mistake. In Poona, the capital of the Peshwa, the untouchable was required to carry, strung from his waist, a broom to sweep away from behind the dust he treaded on lest a Hindu walking on the same should be polluted. In Poona, the untouchable was required to carry an earthen pot, hung in his neck wherever he went, for holding his spit lest his spit falling on earth should pollute a Hindu who might unknowingly happen to tread on it. Let me take more recent facts. The tyranny practised by the Hindus upon the Balais, an untouchable community in Central India, will serve my purpose. You will find a report of this in the Times of India of 4th January 1928. The correspondent of the Times of India reported that high caste Hindus, viz. Kalotas Rajputs and Brahmins including the Patels and Patwaris of villages of Kanaria, Bicholi-Hafsi, Bicholi-Mardana and about 15 other villages in the Indore district (of Indore State) informed the Balais of their respective villages that if they wished to live among them they must conform to the following rules:

The rules of conduct imposed on the Balais wonded the dignity of that community. Another instance in Gujarat referred to by Ambedkar deserves mention. It occurred in the village Kavita:

"The Hindus of Kavitha ordered the untouchables not to insist upon sending their children to the common village

school maintained by Government. What sufferings the untouchables of Kavitha had to undergo for daring to exercise a civic right against the wishes of the Hindus is too well known to need detailed description. Another instance occurred in the village of Zanu in the Ahmedabad district of Gujarat. In November 1935 some untouchable women of well-to-do families started fetching water in metal pots. The Hindus looked upon the use of metal pots by untouchables as an affront to their dignity and assaulted the untouchable women for their impudence." [Ibid. P. 27]

Instance are legion where "Harijans" were treated as social lepers. If we take a holistic view of human bondage and deliverance, of political swaraj as distinguished from Purna Swaraj, a comprehensive critique will lead us to the conclusion that political freedom together with class domination and caste subjugation means only that the white pigment of the tyrant is replaced by the brown skin. True freedom means breakdown of those social structures which alienate communities from the mainstream. A social revolution is integral to a political revolution, if abolition of domination is the goal.

Let us also remember that mere reform at the social level will not secure that fundamental transformation of the social order which alone is the foundation of an egalitarian India. Widow remarriage, abolition of child marriage, even abolition of sati, inter-caste feeding and marriage are good but not enough. The thesis is that a society, truly free, must provide *social democracy*, not merely equality.

When we consider the social dimension of Indian democracy the most glaring contradiction is in the philosophy of human divinity and universal equality on the one hand and the intolerable disparity, indignity and totalitarian denial of material conditions which make for self-esteem and justice to millions upon millions based on the indelibly inherited birth blemish. The social mobility of these large groups called S.C./S.T. has been frozen for centuries, their cultural milieu so conditioned that these aparthiedised human collectives had the option to live a serf's life or perish in protest. The Scheduled Tribes had even been rulers as the Bhils, Gonds, Santhals. They had different ethnic identities like the Nagas and the Mizos. But the ages gone by

exploitatively processed them into fragmented and dishonoured segments alienated from the four *varnas*. The dismal disabilities to which the S.C./S.T. categories were subjected and the social-cultural gap thus sustained were unparalleled – far worse than the hiatus between the patricians and the plabians of Rome, of Jews and gentiles, of Christians and heathens or of Moslems and Kaffirs. At this point, one must emphasize the obvious rather than investigate the abstruse. They are (a) that some layers of the shudra varna — in modern terminology 'other backward classes — is well above the sunken social misery of the S.C./S.T. people; (b) that converts from the outcaste fold of the Hindus to Islam or Christianity cannot be equated with the panchama or scheduled castes. Without denying the graded inequality and consequent many-sided handicaps of both these groups, one must clearly distinguish between the Ezhava and Chandala, the Kamma and the Pariah, the Vannia and the Pulaya and so on. The human solidarity, negatived by the segregationist cult of the Caste Hindu, was implicit in the fraternity postulate of the natio But fraternity was phoney if a large section of people remained. fallen. The patita had to be lifted by special strategies of compassionate equalisation. Swami Vivekananda made a spiritual assault on the untenable communal iniquities which marred India and even infected other religions. Swamiji's words are here:

> "Just see, for want of sympathy from the Hindus, thousands of pariahs in Madras are turning Christians. Don't think this is due simply to pinch of hunger; it is because they do not get any sympathy from us. We are day and night calling out to them. 'Don't touch us, don't touch us' ... Unless they are raised this motherland of ours will never awake! ... Let us open our eyes — I see as clear as day light that the same Brahman, the same Shakti that is in me is in them as well; only here is a difference in the degree of manifestation — that is all. In the whole history of the world, have you ever seen a country rise without a free circulation of national blood throughout its entire body?" [THE HINDU dt. January 14, 1989]

True patriotism is not clothing nor ritual rhetoric but a feeling of indivisibility for all Indians, high and low. Vivekananda once observed:

"They talk of patriotism. I believe in patriotism and I also have my own ideal of patriotism. Three things are necessary for great achievements. First, feel from the heart... Do you feel? Do you feel that millions and millions of the descendants of gods and of sages have become next door neighbours to brutes? Do you feel that millions are starving today, and millions have been starving for ages? Do you feel that ignorance has come over the land as a dark cloud? Does it make you restless? Does it make you sleepless? Has it gone into your blood, coursing through your veins, becoming constant with your heart-beats? Has it made you almost mad? Are you seized with that one idea of the misery of ruin, and have you forgotten all about your name, your wives, your children, your property, even your own bodies? Hove you done that? That is the first step to become a patriot, the very first step." [Socio-Political Views of Vivekananda — Peoples Publishing House — Page 54-55].

Dr. Ambedkar, rooted in the dynamic trinity of values the Buddha had inculcated, did ask for militant practice of *pragna* (understanding), Karuna (compassion) and samata (equality). His vision was not one of humanised practice of varnas but of abolition of dehumanisation by abolition of varnas.

The socio-economic realities of India to-day, what with untouchability, sati and refusal of temple entry for dalits in Rajasthan and elsewhere, indicate that we have miles to go and promises to keep if the first resolve of "We, the People of India" spelt out in the Preamble, namely, Justice, social, economic, and political, Equality, Fraternity and Dignity of the individual is to become a fait accompli. Be that as it may, there is no doubt whatever that it is fundamental that a casteless, classless society free from material, moral and spiritual disabilities is our founding creed and Ambedkar was the new Manu who tore down the decadent manusmriti where the fourfold division of humanity hierarchically was sanctified.

Indian nationalism finds its finest hour only when the people of our Republic practise as a fact of life, the Preambular Pledge which is our tryst with destiny. An egalitarian society is not a dream but a realistic desideratum. The struggle for swaraj, in all its dimensions and for all its people including the Anthyajas may

be hard but must be won if we are to be homogenised as one. This is the revolutionary dialectic of Indian Freedom. But we have been bluffing the down-trodden by the baloney of never implemented reservations, by legislative illusions, by dividing the depressed castes and tribes politically and communally and by adulterating their groups by addition of non-dalits. If we mean business, a revolutionary quantum jump is needed, not in a self-defeating firebrand fashion but in a tactical manner.

Mao:

"A revolution does not march in a straight line. It wanders where it can, retreats before superior forces, advances whenever it has room, attacks whenever the enemy retreats or bluffs and, above all, is possessed of enormous patience."

LECTURE—II

DR. AMBEDKAR'S CONTRIBUTION TO INDIAN SOCIAL, POLITICAL AND CONSTITUTIONAL THOUGHT IN INDIAN POLITY

Wrote Henry James:

> "Ideas are, in truth, forces. Infinite, too, is the power of personality. A union of the two always makes history".

The Indian Constitution is the supreme law of the land. In a popular political sense, the Indian people, as a whole, are the supreme masters who made the Constitution for the governance of the nation. In fact, however, the Constituent Assembly, which functioned from 1946 to the end of 1949, enacted this great instrument. Loosely, we call the dominant figures who shaped the Constitution as the founding fathers. While towering personalities like Jawaharlal Nehru, Sardar Patel, Rajendra Prasad, Rajagopalachari, Alladi Krishnaswamy Ayyar and a galaxy of jurists, statesmen and leaders of various sections of people moulded the Founding Deed, Dr. Ambedkar was the Chairman of the Drafting Committee – the mahar manu of Nav Bharat. The collective labours of the Assembly resulted in that remarkable product, the Constitution. The enactment was complete on 26, November 1949 and came into force on 26th January 1950. The Democratic Republic of India thus sprang into existence on 26th January '50 and we observe that day every year as Republic Day. But while Mahatma Gandhi is rightly revered as the father of the nation, is Bhimarao Ramji Ambedkar, justly considered the father of the Constitution, paid adequate tribute by the Establishment? Perhaps not. And yet few leaders can measure up to his height as its architect, objectively assessed. It is fitting that four decades after his Himalayan Constitution – making undertaking was finished, his countrymen should evaluate his contribution to the shaping of India that is Bharat.

The clearest statement of Ambedkar's abiding message to Indians under the free Republic must begin with and is contained in his final address to the Constituent Assembly on the day the enactment of the Constitution was completed. He was so fearless that his expression was never inhibited even by Mahatma Gandhi's creed and praxis. Essentially, he was a constitutionalist and felt that violation of law, even in the shape of Civil Disobedience, might lead to dangerous consequences. Satyagraha and Ahimsa, satvic in the hands of Gandhiji and Thoreau, would degenerate into asuric forces destructive of the rule of law, in the hands of leaders and others with lesser scruples. The politics of non-cooperation had its limitations to underscore which was Dr. Ambedkar's courageous contribution to the jurisprudence of Civil Disobedience. Free India, with a democratic Constitution had no place for the cult of lawlessness, whatever the garb and whoever the god father. In his speech on November 25, 1949, Ambedkar argued:

> "If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of civil disobedience, non-cooperation and satyagraha When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us."

He was a great dissenter against the unjust social order but the value of his dissenting voice was not negative. His protest was positive and a vote for the construction of a just system where everyone had the freedom to assert his views, unafraid of defying tyrants. Cradled in the ideology of liberty propagated by Mill and surrounded by a social milieu where suffocating devotion to fuehrers in disguise deprived the people of their independent initiative, Dr. Ambedkar was an individualist and never resigned himself to the abject surrender to the feuhrer syndrome. In the struggle for freedom Ambedkar was a rebel among the

caste Hindu leaders and his fearless and outspoken criticism of the many who led the masses often reminded one of the famous statement of Mill:

> "If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

Hindu conformity would have silenced the *Panchama* proletariat, and their lot would never have changed if they had not given battle to the large majority which worshipped the repressive social system. Ambedkar was a peerless and fearless challenger of Hindu orthodoxy.

> "Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society." [Earl Warren]

In tune with his spirit of militant democracy, so necessary in a feudal-colonial society which often genuflected before gods, political and religious, Dr. Ambedkar reminded the Constituent Assembly:

> "The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions." There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish patriot Daniel O'Connell, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to toe salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship."

Western thought, Fabian and Marxist had taught the Indian leadership that democracy was more than political freedom. It had dimensions economic which often conditioned politics itself. Economic democracy was integral to and the power behind political democracy. However, there were other graver attacks on democracy, even where the rule of life gave political and economic freedoms. Negation of social justice, suppression of social equality and crippling of cultural personality dehumanised a people, even if they had the right periodically to go to the polls to choose their surrogates. Gandhiji had these perceptions and Nehru had appreciated the need for fuller democracy beyond mere politics and economics. But Dr. Ambedkar indubitably and outstandingly brought the sharpest focus to bear on the issue of social degeneracy in society which paid lip service to universal divinity and human oneness but practised for centuries graded inequalities and inflicted savageries on their own brothers and sisters whose misfortune was to be borne in Antyaja wombs. Infuriated by this explosive genetic injustice, Ambedkar attacked this satanic deficiency in the Indian polity. He insisted that democracy would breakdown if it was not enlivened by social justice as its soul. In powerful yet controlled diction, Dr. Ambedkar addressed the Assembly on this vital weakness vitiating the larger community of India:

> "The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. With equality, liberty would produce the supremacy of the few over the many, Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We

must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social place, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January 1950, we are going to enter into a life of contradictions. In Politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up".

The most creative contribution made by Dr. Ambedkar was as an uncompromising fighter for Indian humanity, particularly the humblest (usually described as the dalits or scheduled castes and scheduled tribes). There is a common impression in the minds of the post-Independence generation that Gandhiji was the principal savior of the untouchable pariahs of India. But when we consider the stature and achievement of Ambedkar as an intrepid warrior for social — economic liberation of the lowliest, the lost and the last, especially the dalits and the exploited tribals, there is no doubt that without diminishing the tremendous conscientisation of the Hindu community by Gandhiji vis a vis untouchability and Harijan debasement, Bhim Ramji Ambedkar's ceaseless war on behalf of the panchama proletariat, in its widest connotation, is incomparable. And yet, the irony of history is that as the House passed the provision abolishing untouchability on November 29, 1948, the hallowed walls resounded with shouts of Mahatma Gandhi Ki Jai, although present at the Session as Chairman of the Drafting Committee was Dr. Ambedkar, an 'un-

touchable' himself and Commander-in-Chief of the Untouchable Army which waged a war against the reactionary system which sustained the social *status quo ante.* When the pre-Independence saga of India comes to be written only prejudice can assign a higher role in the liberation of the backwardmost brackets to anyone above Ambedkar. While both Gandhi and Ambedkar were symbols of the revolt against the caste-conscious oppressors within the Hindu fold, they chose different paths, different strategies and different ideologies. If Gandhi was a deliverer of Indians, including the weakest sector, from the British Raj, Ambedkar was the spearhead of Black Power against the varna front. There were many issues on which the two militant giants would not agree for the obvious reason that Gandhiji wanted reform to end injustice, While Ambedkar demanded rebellion for the annihilation of the caste system itself. Gandhiji was a vysya and insisted on eradication of shudrahood and untouchability. Ambedkar was a mahar and indignantly insisted on the abolition of the varna structnre, thereby levelling up all castes into one oceanic unity or human *sagara.* Ambedkar was a historic necessity, a dialectical demand if social democracy was to be India's desideratum. It *was*, and he became the symbol of social liberation of Depressed Classes and of Womanhood. He joined Government to advance the cause and quit it when he was betrayed from within. The fire of this *mahar* was rare in the Indian public life of his time.

Before a Gandhi, even a Nehru yielded, but Dr. Ambedkar, with a cause too dear to surrender and a conscience too clear to barter, dissented, revolted and resisted without inhibitions. Few, if any, rose to revolt against the respectable nationalists or dared to expose the reformist Hindu hypocrites as Ambedkar did to annihilate the inhumanity and injustice of the caste system whose strangle-hold on India was too strong for Gandhian techniques. Gandhian satyagrah, as social anti-biotic, was too soft to defeat the die-hards. The bugle call of battle to wipe out the scourge of casteism was the Ambedkar strategy. Gandhi's varna reform failed and Ambedkar's rage against that vice was futile because conflicting remedies blunt the sword of breakthrough; still Ambedkar's war on social suppression was notable. India needed an Ambedkar if its progress was to have made headway. He was high enough, brave enough, talented enough to reach the top in

a public and professional life, without sounding the conch of revolt. But he did it because that was the categoric call of his time to make his breed free. 'Do or die'. Defiance is the oxygen of society's advance when Reaction is determined to destroy progress. G.B. Shaw put it so powerfully:

> "If the Englishman had not repudiated the duty of absolute obedience to his king, his political progress would have been impossible. If women had not repudiated the duty of absolute submission to their husbands, and defied public opinion as to the limits set by modesty to their education, they would never have gained the protection of the Married Women's Property Act or the power to qualify themselves as medical practitioners. If Luther had not trampled on his duty to the head of his Church and on his vow of chastity, our priests would still have to choose between celibacy and profligacy. There is nothing new, then, in the defiance of duty by the reformer: every step of progress means a duty repudiated, and a scripture torn up. And every reformer is denounced accordingly, Luther as an apostate, Cromwell as a traitor, Mary Wollstonecraft as an unwomanly virago, Shelley as a libertine, and Ibsen as all the things enumerated in the Daily Telegraph."
>
> — GEORGE BERNARD SHAW:
> The Quintessence of Ibsenism.

To go against Gandhi, to fight the National Congress, to demand equal share of power for the Depressed Classes, to draft legislations for womanhood's equality needed the courage of an iconclast, and Ambedkar was just that.

Annihilation of caste had a broader dimension than mere extinguishment of distinction between Brahmins and bhangis. It was the ideological imperative of the practical unity of man and the solidarity of humanity without which fraternity was rhetorical futility. Ambedkar explained its significance in his famous final address in the Constituent Assembly.

> "The second thing we are wanting in, is recognition of the principle of fraternity. What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians — if Indians being one people. It is the principle

which gives unity and solidarity to social life. It is a difficult thing to achieve".

Without fraternity, liberty and equality are no better than coats of paint. So to achieve fraternity, it is very much essential to forget the caste-differences. In India, it is difficult to reach the goal of achieving fraternity, because the caste-phenomena is deeply rooted in Indian Culture. So efforts should be made towards achieving fraternity, then only India will be a nation in the social and psychological sense of the word.

The peril to our national survival if social integrity is not established is emphasized by him in the same address made on 25—11—1949:

> "These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realisation in the down-trodden classes must not be allowed to devolve into a class struggle or class war. It would lead to a division of the house. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a house divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance of its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stress on them." (From the Concluding Speech of Dr. B. R. Ambedkar in the Constituent Assembly on 25—11—1949).

Dr. Ambedkar, with the power of a campaigner and perceptiveness of a dialectical activist, made a great contribution to the application of democracy in its social dimension to the squalid disparities and biting acerbities of Indian life. His speech in the Assembly states succinctly his conception of social contradiction in India and the urgent imperative of its eradication if democracy, with stability and harmony, were to be a reality.

That sensitive Jurist, the late Justice Gajendragadkar, long years later, paid homage to the Ambedkar principle of social equality.

"Sometimes, I feel that economic reforms may not be completely successful unless social equality is established. The result of national concentration on political freedom, without realising that political freedom must involve social equality and economic justice, has been that our social structure today remains substantially what it was before we attained political freedom; and that is a matter which ought to cause the gravest concern to all sensitive and sensible men and women in our country. As a result of the indignities to which Harijans are exposed in cities and more particularly in villages, a new militant movement has emerged in Maharashtra." [From the Speech of Sri Gajendragadkar in his Kumaramangalam Memorial Lecture]

It must be mentioned for clarity that Gandhiji's stress was more on abolition of untouchability and assurance of harijan title to temple entry, not the banishment of the Varna structure.

He argued with powerful simplicity:

"To remove untouchability is a penance that Caste Hindus owe to Hinduism and to themselves. The purification required is not of 'untouchables' but of the so-called superior castes. There is no vice that is special to the 'untouchables', not even dirt and insanitation. It is our arrogance with blinds us, superior Hindus, to our own blemishes and which magnifies those of our down-trodden brethren whom we have suppressed and whom we keep under suppression."

"And I should be content to be torn to pieces rather than disown the suppressed classes. Hindus will certainly never deserve freedom, nor get it if they allow their noble religion to be disgraced by the retention of the taint of untouchability. And as I love Hinduism dearer than life itself, the taint has become for me an intolerable burden. Let us not deny God by denying to a fifth of our race the right of association on an equal footing."

"This great Hindu religion itself will perish in spite of its so-called millions of followers if its votaries persist in harbouring the evil of untouchability".

[My Experiments with Truth —

By M.K. Gandhi — P. 100-101]

Nevertheless, Harijanhood is rooted in the Varna structure; and so long as the caste system survives. even after abolition of untouchability and harijan temple entry, it will dehumanize the higher rule of life of true fraternity and social integrity. Many Manus, in philosophical garb, have interpreted *Varnasrama Dharma*, but few have attempted to change the scheme into the *Dhamma* of *Prgna Samatha* and *Karuna.* Dr. Ambedkar belongs to this small seminal group. Said Marx:

> "The philosophers have only interpreted the word in various ways: the point is to change it".

When the history of Indian Independence, in its many dimensions, comes to be written, Ambedkar's contribution will stand out as a fresh, fierce infusion of social democracy sans which political freedom stands on shifting sands. Not that he loved Swaraj less but that he loved dalit justice more. In his speech at the Round Table Conference he argued with the soul of social justice beyond brown-skinned swaraj which slept peacefully with the status quo suppression of *panchamas*. More than any Indian it was Ambedkar who fought for the philosophy of social egalite and the indictment, not merely of the caste system as an Indian phenomenon, but also of stratified systems of inequality everywhere. He was not content with bare equality before the law when the law in Free India would be manipulated by a caste-prone majority communities. This insistence on guaranteed human rights was the basic reason behind articles 12 thro' 18. To strengthen the hands of the depressed classes he demanded special representation in Legislatures and Public Services. These protective procedures were desiderated because, as a chamar himself, he knew the social potential of slave submission even if the country became free from foreign control Dr. Ambedkar wrote:

> "Untouchables were treated as slaves because "(1) they were so socialized as never to complain of their low state; (2) they never dreamed of trying to improve their lot, by forcing the other classes to treat them with the common respect; (3) the idea that they had been born to their lot was so ingrained in their mind that it never occurred to them to think that their fate was anything so irrevocable; (4) Nothing would ever persuade them that men are all made of the same clay, or that they have the right to insist on better treatment

than that meted out to them." [What Congress and Gandhi have done to the Untouchables — Page 194]

Again, in his evidence before the Southborough Committee in 1919 he advocated the cause with clarity and power:

"The exact description of the treatment cannot be attempted. The word 'untouchable' is an epitome of their ills and sufferings. Not only has untouchability arrested the growth of their personality but it comes in the way of their material well-being. It has also deprived them of certain civil rights. For instance, in Kokan the Untouchables are prohibited from using the public road. If some high caste man happens to cross him he has to be out of the way and stand at such a distance that his shadow will not fall on the high caste man. The Untouchable is not even a citizen. Citizenship is a bundle of rights such as personal liberty, personal security, right to hold private property, equality before law, liberty of conscience, freedom of opinion, speech, right of assembly, right of representation in a country's Government and right to hold office under the State. The British Government by gradual growth may be said to have conceded these rights at least in theory to its Indian subjects. The right of representation and the right to hold office under the State are the two most important rights that make up citizenship. But the untouchability of the Untouchables puts these rights far beyond their reach. In a few places, they do not even possess such insignificant rights as personal security. These are the interests of the Untouchables. And as can be easily seen they can be represented by the Untouchables alone. They are distinctively their own interests and none else can truly voice them. A free trade interest can be voted by a Brahmin, a Mohamedan or a Maratha equally well. But none of these can speak for the interests of the Untouchables because they are not Untouchables. Untouchability constitutes a definite set of interests which the Untouchable alone can speak for. Hence it is evident that we must find the Untouchables to represent their grievances which are their interests and secondly we must find them in such numbers as will constitute a force sufficient to claim redress." [B.R. Ambedkar — A Study in Social Democracy By Lokhande — P. 162-163]

The cry was not for reformers here and there but for radical restructuring, a revolutionary end to caste domination. Says Engels:

> "The times of that superstition which attributed revolutions to the ill will of a few agitators have long passed away. Everyone knows nowadays that wherever there is a revolutionary convulsion, there must be some social want in the background, which is prevented, by outworn institutions from satisfying itself.

There were Hindu reformers who worked for amelioration of the caste process, including untouchability, which would keep the caste system alive but make it acceptable. But as a dialectical student, Ambedkar was for annihilation of caste. Why? John Morley, writing On Compromise, explains it:

> "The fatal French saying about small reforms being the worst enemies of great reforms, is in the sense in which it is commonly used, a formula of social ruin. On the other hand, let us not forget that there is a sense in which the very saying is profoundly true. A small and temporary improvement may really be the worst enemy of a great and permanent improvement, unless the first is made on the lines and in the direction of the second... The small reform may become the enemy of the great one."

Dr. Ambedkar was not a mere Depressed Class leader but a defender of human rights, of weaker and exploited people. So he organized educational institutions to raise the level of consciousness of the serf-like people. "Tell the slave that he is a slave and he will revolt against his slavery" was Ambedkar's argument. So he started journals and educational institutions for dalits, fought for women's equality and labour's right to a fair deal. The broad impulse of Bhimrao Ramji Ambedkar was to wage bitter battle for human rights. To his fellowmen he spoke in agony:

> "My heart breaks to see the pitiable sight of your faces and to hear your sad voices. You have been groaning from time immemorial and yet you are not ashamed to hug your helplessness as an inevitability. Why did you not perish in the prenatal stage instead? Why do you worsen and sadden

the picture of the sorrows, poverty, slavery and burdens of the world with your deplorable, despicable, detestable, and miserable life? You had better died and relieved this world if you could not rejuvenate yourself. As a matter of fact, it is your birth right to get food, shelter and clothing in equal proportion with every individual, high or low. If you believe in living a respectable life you should believe in self-help which is the best help." [B. R. Ambedkar — A Study in Social Democracy — By G. S. Lokhande — P. 171]

Again, he even referred to French and American instances and urged:

"We are demanding equal rights which are the common possession of the entire humanity but due to inhibitions created by the Shastras we have been denied these human rights. I am telling you that wherever human rights were snatched away, there, battles and bloodshed and wars were fought and bloodshed was witnessed. In case of France when the nobles denied the human rights to the lower class people, they massacred the nobles until they finally won the battle. The battle was continued for more than ten years. In America too, the American people fought the civil war, in order to emancipate the Negroes from slavery. In the civil war, those who died did so after doing certain noble deeds. Those who remained alive enjoyed the happiness of free men. Such a kind of battle was required in order to restitute the lost human rights. But I do not understand how our people, even though they were put to injustice, mortification, and insults, still, how they could tolerate them like a dumb lot of humanity, and like a submissive cow. We never feel sorry, we never get annoyed and we never realize the insults.

"We are self-satisfied, even though we have been kicked by the caste Hindu people. What are the reasons which made us dead in mentality and spirit? I find we don't have sufficient knowledge and wisdom, and secondly, we don't have economic, social and physical strength. Whoever, has knowledge, wisdom and strength is capable of tyrannizing those who do not have either of them. Therefore, the particular Code of Conduct was assigned to us by those who had knowledge, wisdom and strength. I am very sorry to say because of the ignorance, gulliblity and utter submissiveness,

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we are suffering these injustices. As we are not conscious of the heritage acquired by the humanity we made our position deplorable, helpless, and hapless and therefore, we are facing the difficulties of food, cloth and the place of shelter even though India is a country which is called a golden country. In the midst of plenty, we are poverty-stricken. I, therefore, give you the clarion call not to be satisfied, that you should not be satisfied, self-complacent and be the worshipper of the old value. I do not want, whatever the ancestral deeds, we should do the same thing. We have to change the present situation. When we change the present situation I am sure, the Code of Conduct forced on us will also change. If you do not change, then it will be quite impossible for us to fight against the odd circumstances. Don't believe in time. Don't believe in accidents and coincidence. Believe that man is the creator of history, and he can come out successful, notwithstanding the odd circumstances." [IBID. 171-172]

What passion for human justice!

The struggle of dalits, including tribals, — homeless, landless, school-less, sex-molested, servile, murdered without trial — still continues. Ambedkar tried even satyagraha at Mahad to secure human rights for the depressed classes. Simultaneously, he was a burning nationalist who condemned the British for its deportation of Tilak and transportation of Savarkar and the repressive Indian Press Act, 1910. So did he criticise the British bureaucracy and their deceptive political Reforms.

The Hindu Code Bill designed to liberate Hindu womanhood proved a casualty when, in the face of Reactionary Opposition, even Nehru jettisoned it. A man of conviction and courage Dr. Ambedkar resigned from the Cabinet on that score and wrote to Nehru:

"For a long time I have been thinking of resigning my seat from the Cabinet. The only thing that had held me back from giving effect to my intention was the hope that it would be possible to give effect to the Hindu Code Bill before the life of the present Parliament came to an end. I even agreed to break up the Bill and restricted it to Marriage

and Divorce in the fond hope that at least this much of our labour may bear fruit. But even that part of the Bill has been killed. I see no purpose in my continuing to be a Member of your Cabinet." [IBID. P. 207]

Labour, in a bourgeoise society bears the stamp of casteism and genderism when it comes to workers from among dalits and women. So Ambedkar opposed this tendency and at a Conference explained the dialectics of depressed status:

"But I know that in the Bombay Presidency the Depressed Classes are shut out from the weaving department in the cotton mills both in Bombay and in Ahmedabad. They can only work in the spinning department. The spinning department is the lowest paid department. The reason why they are excluded from the weaving department is because they are Untouchables and because on that account the caste Hindu worker objects to work with them although he does not mind working with the Musalmans."

He added, "The two enemies are Brahmanism and capitalism. The accusation by our critics arises partly because the critics fail to reckon Brahmanism as an enemy which the workers have to deal with. I do not want to be misunderstood when I say that Brahmanism is an enemy which must be dealt with. By Brahmanism I do not mean that power, privileges and the interests of the Brahmins as a community. That is not the sense in which I am using the word. By Brahmanism I mean the negation of the spirit of liberty, equality and fraternity. In that sense it is rampant in all classes and is not confined to the Brahmins alone though they have been the originators of it. This Brahmanism which pervades everywhere and which regulates thoughts and deeds of all classes is an incontrovertible fact. It is also an incontrovertible fact that this Brahmanism gives certain classes a privileged position. It denies certain classes even equality of opportunity. The effects of Brahmanism are not confined to social rights such as inter-dining or inter-marriage. It extends to civic rights as distinguished from social rights. Use of public schools, of public wells or public conveyances, or public restaurants are matters of civic right. Everything which is intended for public use or maintained out of public fund must be open to every citizen." [IBID. — 207-208]

As Labour Minister he sought to wipe out this apartheid tendency. He even advocated opposition to the Nazi regime during the war, and asked for a New Order. His stand on World War II was conditioned by his hatred of the Nazis and support for the Allies. His conception of a new order was based on nationalism and humanism. Here it is good to quote him, because it illumines his broader perspective and holistic approach.

"There are pessimists who say that there is no guarantee that victory will be followed by a New Order. There is perhaps room for this pessimism. The New Order which is the ideal of labour, has its root in the French Revolution. The French Revolution gave rise to two principles, the principle of self-government and the principle of self-determination. The principle of self-government expresses the desire of the people to rule itself rather than be ruled by others whether the rulers be absolute monarchs, dictators or privileged classes. It is called Democracy.

"The principle of self-determination expresses the desire of a people united by common ideals and common purposes to decide, without external compulsion, its political status, whether independence, inter-dependence or union with other peoples of the world. This is called nationalism. The hope of humanity was centred on the fructification of these principles. Unfortunately, after a lapse of nearly one hundred and forty years, these principles have failed to take roots. The old regime has continued either in all its nakedness or by making sham concessions to these principles. Barring a few countries, there was neither self-government nor self-determination in the world. All this, of course, is true. But this is no argument against the attitude taken by labour, namely, that the preliminary condition for the establishment of the New Order is victory over the forces of Nazism. All that this means is that labour must be more vigilant and that the war must not stop with victory over Nazis, but there must be no peace unless there is victory over the Old Order wherever it is found.

"More serious opponents of labour are, of course, the Nationalists. They accuse labour of taking an attitude which is said to be inconsistent with and injurious to Indian nation-

alism. Their second objection is that labour agrees to fight for the war without getting any assurances about India's independence. These are questions so often posed and so seriously argued that it is necessary to state what labour thinks of them.

"As to nationalism, labour's attitude is quite clear. Labour is not prepared to make a fetish of nationalism. If nationalism means the worship of the ancient past, the discarding of everything that is not local in origin and colour, then labour cannot accept nationalism as its creed. Labour cannot allow the living faith of the dead to become the dead faith of the living. Labour will not allow the ever expanding spirit of man to be strangled by the hand of the past which has no meaning for the present and no hope for the future, nor will it allow it to be cramped in a narrow jacket of local particularism. Labour must constantly insist upon renovating the life of the people by being ever ready to borrow in order to repair, transform and recreate the body politic. If nationalism stands in the way of this rebuilding and reshaping of life, the labour must deny nationalism.

"Labour's creed is internationalism. Labour is interested in nationalism only because the wheels of democracy such as Representative Parliaments, Responsible Executive, Constitutional Conventions, etc., work better in a community united by national sentiments. Nationalism to labour is only a means to an end. It is no end in itself to which labour can agree to sacrifice what it regards as the most essential principles of life." [IBID. — P. 213-214]

At a time when support for the war effort was most unpopular he gave an ideology to Labour in taking a positive stance.

"Lobour is aware that the only compensation for the cost of this war is the establishment of a New Order in which liberty, equality and fraternity will not be mere slogans but will become facts of life. But the question of all questions is: how can the hope of this New Order materialise? On this question labour is quite emphatic. Labour insists that for the materialisation of all these ideals there is one condition that is primary and that is success in the war. Without success

in the war there can be no self-government and self-determination for India. Without victory in the war, independence will be idle twaddle. This is the reason why labour is determined to win this war."

Foreseeing the revolutionary consequences of the war, he continued:

"This war is full of potentialities for good. It promises to give birth to a new order. Labour finds that this war is different from other wars. There are two features which distinguish it from other wars. In the first place, this war is not altogether a war for the division of the world's territory amongst the most powerful nations of the world as the preceding wars have been. In this war, the division of the world's territory is not the only cause. This is a war in which there is a conflict of ideologies relating to the forms and systems of Government under which humanity is to live. In the second place, the object of this war is not merely to defeat the enemy, to march on to his capital and to dictate a peace. This war besides being a war is also a revolution — a revolution which demands a fundamental change in the terms of associated life between man and man and between nation and nation. It is a revolution which calls for a revision of the terms of associated life, a replanning of the society. In this sense it is a people's war, and if it is not, it could and should be made into a people's war.

"Given these facts, labour cannot be indifferent to this war and its outcome." [IBID. P. 216]

Another important contribution of Ambedkar to Indian progress was faith in a Constitutional Order and working for its change, as distinguished from the Gandhian technique law-breaking when the law was satanic. The civil disobedience methodology would be a Grammar of Anarchy he thought. He was also the father of the Constitution, as Chairman of the Drafting Committee. He was a fabean socialist and Buddhist, dialectical in his approach and courageous in his views.

In this context, the present condition of the Dalits, still far from fair, is proof of Ambedkar's far-sightedness. In a speech on

November 20, 1930 he spoke what still rings true. About the depressed classes and their lot he said:

"It is one which is midway between that of the serf and the slave, and which may, for convenience, be called servile — with this difference, that the serf and the slave were permitted to have physical contact. From which the depressed classes are debarred..."

"It must be recognised that Indian society is a gradation of castes forming an ascending scale of reverence and a descending scale of contempt — a system which gives no scope for the growth of that sentiment of equality and fraternity so essential for a democratic form of government." [Legal Pespectives, 1987 — P. 215]

Is this state of affairs not prevalent in many North Indian States even to-day?

Mere political power under swaraj is poor social consolation for the Dalits. So Ambedkar said in 1930:

"We hold that the problem of the depressed classes will never be solved unless they get political power in their own hands."

"The idea of Swaraj recalls to the mind of many of us the tyrannies, oppressions and injustices practised upon us in the past and the fear of their recurrence under Swaraj." [IBID. — Page 216]

It was high statesmanship that persuaded him to enter into the Communal Award. When the Mahatma went on a fast unto death against the Communal Award, Ambedkar alone could have saved his life, by giving up separate electorate for harijans. The statesman in him rose to the occasion and ended the epic fast of Gandhiji by agreeing to the historic Poona Pact. Dr. Ambedkar explained how his soul responded to save the life of Gandhiji.

"... I had to make a choice between two different alternatives. There was before me the duty, which I owed as a part of common humanity to save Gandhi from sure death.

There was before me the problem of saving for the Untouchables the political rights which the Prime Minister had given them. I responded to the call of humanity and saved the life of Mr. Gandhi by agreeing to alter the communal Award in a manner satisfactory to Mr. Gandhi." [What Congress and Gandhi have done to the Untouchables — P. 88]

A second Ambedkar, with the power of a thunderbolt, is an imperative of history if social justice to the Dalit sector is to become a way of life. The current situation gives us a picture of "the petty done, the undone vast."

A glimpse of the sombre S.C./S.T. scenario is pathetic.

"In mid-1980 it was disclosed in Parliament that the annual number of cases registered under the Indian Penal Code against the members of the non-scheduled castes for committing offences against members of the Scheduled Castes increased from 8860 in 1974 to 15059 in 1978, that is, by nearly 70 percent in four years. Over 70 per cent of all such cases were registered in the three northern states of Utter Pradesh, Madhya Pradesh and Bihar (see Economic and Political Weekly, 1980: 1335-37). It must be noted that these figures do not cover the large number of offences committed under the various provisions of the Protection of Civil Rights Act 1955, as amended in 1976. Nor are they exhaustive, and do not therefore reflect the actual situation.

In his 26th Report (1978-79), the Commissioner for Scheduled Castes and Scheduled Tribes (hereafter the Report 1980: 2) observed that "atrocities on the scheduled castes, a continuing feature have, of late, been registering a perceptible rise giving cause for great concern." According to this Report (1980: 187), the number of cases registered under the Protection of Civil Rights Act increased from 2742 in 1977 to 4256 in 1978, that is, by 55.2 per cent. It quotes the findings of a survey of social disabilities still experienced by "Harijans" in villages conducted by the All Indian Harijan Sevak Sangh in 12 States covering 1115 villages in 25 districts. In 613 (15.1 per cent) 821 (17.1 per cent), 496 (42.9 per cent), 473 (41 per cent) and 603 (52.2 per cent) villages, the wells, temples, hotels/restaurants, barber shops and

washermen shops respectively were not accessible to the Scheduled Castes (1980: 182-85).

The number of atrocities committed on Scheduled Castes increased from 6197 in 1976 to 15033 in 1978, giving an increase of 142.9 per cent in three years. Nearly 72 per cent of these atrocities were reported from the northern States of Uttar Pradesh (37.6 per cent), Madhya Pradesh (21.5 per cent) and Bihar (12.7 per cent). Crime-wise details of incidents of atrocities on Scheduled Castes during 1978 reveal that the single largest category related to physical violence (1570 or 10.4 per cent), followed by arson (1202 or 8.0 per cent), rape (541 or 3.6 per cent), and murder (456 or 3.0 per cent). The Commissioner cautions that "complete reliance cannot be placed on statistical information alone because the number of cases of atrocities on these communities may be actually much more than revealed by these figures." (Report 1980: 230-33). [Legal Perspective, August 1986 — Page 23-24]

In constitutional terms, equality is writ large, but practical life repudiates this inference.

"The members of the Scheduled Castes are theoretically free citizens and if they are aggrieved, they can approach the police and the court of law, which are open to all, expected to treat all as equal and supposed to dispense even-handed justice to one and all". [IBID. Page 24]

How naive! With greater poignancy, the sarcasm of Anatole France applies to the S.C./S.T. miserables:

"The majestic egalitarianism of the law, which forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread."

The shocking illiteracy among these categories makes legal protection a sheer fiction.

"Complainants and the witnesses they need to prove their cases are extremely vulnerable to intimidation and reprisal. Very often they are economically dependent upon the higher castes". They may face social boycott or reprisal

in the form of eviction or denial of grazing rights, even if they are not subjected to physical coercion in the form of beatings, house burnings or worse. "Except in cases where outsiders are involved, witness other than their caste fellows are not ordinarily forth-coming". And, "if the complainant does have witnesses and a good case, he is likely to be subjected to pressure to compound it". [Legal Perspectives, August '86 — Page 25]

Bihar and Madhya Pradesh, U.P., even Karnataka, are still horror for harijans and terror for adivasi activists. The legal machinery is biassed against S.C /S.T. members.

"Of course, boycots and reprisals are themselves offences; but by their very nature, they are even more difficult to prove. "The involve the behaviour, often covert, of a large number of people and successful prosecution requires proof or motivation. Witnesses will be even harder to find. (Galanter 1972: 277). In brief, as Y. Dror Claims, legislation which appears to control "external" behaviour may have the effect of making the practices and attitudes at which the law is really aimed more covert and harder to detect (See Cotterrell 1984: 59)." [IBID. Page 25-26]

The police support the upper castes and even oppress these *panchamas*.

"More disconcerting as the Elayaperumal Committee pointed out, "the guardians of the law who are expected to take cognizance of the offences under the (Untouchability Offences) Act were mostly ignorant of it". "Copies of the Act were not even available at many of the district offices and many government officials had no knowledge of the provisions of the Act" (Department of Social Welfare 1969-43).

Not surprisingly then, a substantial number of cases that are brought to the attention of the police are ignored or at best "compromised" without being registered. In 1978, in addition to the 188 cases under the Protection of Civil Rights Act pending with the police, 4256 fresh cases were registered. Of the 4444 caies, 3150 (70.9 per cent) were

challaned in courts, 721 (16.2 per cent) were closed by the police after investigation without challaning and 573 (12.9 per cent) cases were still pending with the police (Report 1980: 188).

"An analysis of 70 disposed-off cases by the Elayaperumal Committee found that the average time consumed was more than six months (Department of Social Welfare 1969: 51). In 1978, if 1334 cases registered by the police under the Protection of Civil Rights Act were disposed-off by the courts, as many as 3991 cases were still pending. That is, for every case disposed-off three were pending. These respectively formed 25.1 per cent and 74.9 per cent of the cases in courts and 87.6 per cent and 30.4 per cent of the total number of cases under this Act on police records in 1978. Of the 4852 cases pending in the courts during 1978, 1902 (39.2 per cent) were pending for one to six months, 178 (36.7 per cent) for six to 12 months, 160 (17.7 per cent) for one to two years and 309 (6.4 per cent) for over two years (Report 1980: 188-189 and Vol. 2: 139-40).

Delay only makes litigation more expensive; and the victim arraigned as he is against the accused who has greater resources, is at a decided disadvantage. The accused can engage the Services of "efficient" lawyers, who quite often than not themselves belong to higher castes and are dependent upon the patronage of the propertied class. In brief, from a legal system and a legal profession which are biased in favour of the rich and the dominant sections of the society, it is indeed doubtful if the Scheduled Castes can expect any justice."

"It is significant that of the 1334 Protection of Civil Rights Act cases disposed-off in 1978, an over-whelming majority of 1136 (85.2 percent) cases ended in acquital and barely 198 (14.8 percent) resulted in conviction. A further analysis of the 70 disposed-off cases by the Elayaperumal Committee suggests that "protracted delay substantially reduces the chances of conviction". As Galanter rightly concludes, "the more acquittals. the less the Act will be used; and the less it is used, the more difficult it will be for Judges to make the extraordinary exertions required to carry out its original policy..." (1972: 261).

Even if inspite of all these odds the complainat does succed in securing a conviction, the penalties imposed are so ludicrouly light as to have very little deterrent effect. An analysis of 22 cases resulting in conviction by the Elayaperumal Committee revealed that the median penalty was a fine of Rs. 10/-. the minimum and maximum fines were Re, 1 and Rs. 100/- respectively, the minimum and maximum terms of imprisonment were one week simple imprisonment and one week rigorous imprisonment respectively, and in two cases the conviction ended only in a warning. In view of such a high level of judicial lenience "it is not difficult to see why few untouchables would feel that there is anything to be gained by instituting a case under the UOA". (Galanter 1972: 278 and 280)." [IBID. Page 26, 27 & 28]

The fundamental flaw is that the legal process and personnel are hostile to 'harijans' and girijans, overtly and covertly. Bonded labour, destitutes among women and children, rape victims and homeless unfortunates come mostly from the S.C./S.T. sector. Law is what law does and protective legislation in terrorem in look is hoax when it works. Therefore conscientisation of the community, raging campaigns against religious propagandists of untouchability and feudal exploitation and legal literacy, together with S.C./S.T. recruitment in high public services, are immediate items on the agenda. A rediscovery of India without varnish and in true colours is necessary now.

"The inhuman Yesterday and the less-than-human Today must be supplanted by a human Tomorrow. Parliamentary methods may go some way but not all the way. Extra Parliamentary militancy, displayed through mass organisations and contained within civil limits, must back up parliamentary pressure. The focus-at once fierce and constructive — must be on the deliverance of the Dalit proletariat from their down-trodden state. Our system will be doomed to an adaptational breakdown if we do not adopt activist sociolegal and politico-legal Darwinism. If we use law for social change, the transformation will be peaceful. It has been rightly said: The function of law is to conserve the past, to assimilate the present and to anticipate the future. Law not only embodies past history but is impregnated with the seeds of future history. We need a New Testament

whereby the system which thrives on slavs and serf and the toiling Labour but keeps power with the slave-owner, squire and capitalist, is replaced by a set of rules governing social relations where the classes-masses dichotomy will gradually vanish and equal justice under the law will prevail. In short, our economic and legal system shall be becoming of a socialist republic." [AMBEDKAR MEMORIAL LECTURES 1979 — delivered by Justice V. R. Krishna Iyer at the Jawaharlal Nehru University — Delhi University Press— Page 89]

Dalit power is finding its hour. Dalit panther is developing into a terror. Dalit deliverance is the summons of swaraj.

V. R. KRISHNA IYER.

Lecture – III

ADVANCEMENT OF SCHEDULED CASTES/ TRIBES AND WEAKER SECTIONS – PAST, PRESENT AND FUTURE.

SECTION A

"We have closed down our *consciousness and aliveness* to a level where it does not bother us — So if you wonder if it costs us any thing to allow millions to starve, it does. It costs us our *aliveness*",

— The Aquarian Conspiracy
By Marilyn Ferguson — p. 456.

"There are no passengers on Spaceship Earth.
Everybody's crew".

= Marsholl McLuhan

To begin the saga of the dalit sector of India, let me begin with our pledge taken at the dawn of Indian Independence.

"Long years ago" solemnly intoned Jawaharlal Nehru, the then first servant of the Indian People, "we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

"At the dawn of history India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her successes and her failures. Through

good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?" [Address of Jawaharlal Nehru on August 14th/15th 1947]

Sovereign India, with no British alibi available in exculpation, has failed in its responsibility to salvage the lowly, the lost and the last. "We have to build the noble mansion of the free India where all her children may dwell" orated Pandit Nehru then. Have we built that noble mansion of the nation or have the many-millioned Scheduled Castes and Scheduled Tribes been doped by verbal hopes? Are all the boasts of 'sector plans' for development of Adivasis and Antyajas mere constitutional clab-trap? A social audit and performance sheet vis a vis dynamic equality and escalation of equalisation, from the socio-economic angle, may have to be undertaken before the verdict is rendered.

To-day, India struggles to maintain its integrity as a nation, with challenges from within and without. Mere territorial containment and constitutional parchment cannot make a demographic accumulation an integrated Nation. Only equality, liberty, fraternity and social justice can weave people of diverse faiths and cultures into a single strong garment of nationhood. From this perspective, we have to ascertain and assess how far the weakest sector of the Indian polity, namely the Scheduled Castes and Scheduled Tribes, now enjoy the Indian birth right which belongs to them. Let us remind ourselves of Ambedkar's gentle admonition which has relevance here.

"I remember the days when politically minded Indians resented the expression "the people of India". They preferred the expression "the Indian nation". I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realise that we are not as yet a nation in the social and psychological sense of the word, the better for us. For then only we shall

realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult — far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. These castes are anti-national: in the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint."

[From the Speech of Sri B.R. Ambedkar on 25—11–1949 in the Constituent Assembly]

Skin-deep equality and cultural cosmetics may appear to meet legal needs, but soul-deep social justice is a therapeutic operation, where marginalised groups suffer discriminatory leprosy, demanding effective action. We must establish a new dharma fine-tuned to a dynamic nationalism where egalitarian values catalyse a new community solidarity, sans castes, sans disabilities, sans social suppression.

Three classes have been identified as historically discriminated against. The current colourless euphemism for them is (a) Scheduled Castes (b) Scheduled Tribes and (c) Other Backward Classes. Curiously enough, the Constitution hardly gives any criteria for selection of these human categories justifying benignant discrimination. But it cannot be denied that social reformers and even the alien British Government have recognised the inferior lot of the lower castes and classes.

Marc Galanter has summed up the history of the evolving terminology:

"Scheduled Castes" is the most recent of a long line of official euphemisms for "untouchables". The Scheduled Caste category is intended to comprise those groups isolated and disadvantaged by their "untouchabilility" ... i.e., their low status in the traditional Hindu caste hierarchy which exposed them to invidious treatment, severe disabilities, and deprivation of economic, social, cultural, and political oppor-

tunities. In the early years of the century the "depressed classes" (as they were then called) became an important focus of concern among reformers. After 1901, fears of diminished Hindu majorities and proposals for special legislative representation for these classes propelled "untouchability" from the realm of philanthropy into the political arena. As concern about untouchables grew and political demands were made in their behalf, there was sharp disagreement about the number of persons who belonged in this category.

"From 1908 on, it was claimed by numerous writers that untouchables numbered 50 millions or more ... about 24% of the Hindu population or just under 16% of the total population of India according to the 1911 Gensus. Although Madras compiled a list of Depressed Classes during the 1920s, the Government of India refrained from any official classification (until 1936) on the ground that it would be unfair to stigmatize these groups by official acknowledgement of their low status." [Competing Equalities — Law And the Backward Classes in India — By Marc Galanter — P. 122-123.

The zigzag of Committees and Reports only stresses the broad fact that the Depressed Classes suffered and suffer gross social exclusion injustice. Continues Marc Galanter:

"The earlier investigations had tended to proceed on the assumption that untouchables throughout India were set off by some uniform and distinctive pattern of practices and that a test could be devised that would identify them on an all-India basis. Thus, the Government of India's 1919 Despatch criticizing the inadequacy of the Southborough Committee recommendations for recommendations for representation for the Depressed Classes, observes that 'though they are defined in varying terms (they) are broadly speaking all the same kind of people. Except for the differences in the rigidity of their exclusion they are all more or less in the position of the Madras Panchamas, definitely outside that part of the Hindu community which is allowed access to their temples."

"But this assumption proved difficult to apply in northern and eastern India. Touch and distance pollution extended throughout the caste system in the south, while in the north touch and distance pollution were not expressed uniformly enough. The Simon Commission, a decade later, conceded that in Bengal, the United Provinces, and Bihar and Orissa, there was a wide margin of possible error. In these provinces 'the connection between theoretical untouchability and practical disabilities is less close, and a special investigation might show that the number of those who are denied equal rights in the matter of schools, water and the like is less than the total given for the depressed classes in these areas."

"The very different nature of the matter in the north was brought out nicely in the testimony before the Indian Franchise Commission of Mr. G. S. Pal, representing the United Provinces Hindu Backward Classes League, which had submitted a list of 115 castes (estimated to make up over 60% of the population) for inclusion as Depressed Classes in the United Provinces.

'Dr. Ambedkar. My point is this. Is this a list of what might be called backward communities, economically backward and educationally backward? Or is this a list of castes which are called untouchables, whose touch causes pollution? Is this a list of castes which are called untouchables whose touch causes pollution? Is this a list of castes which are touchable but which are educationally and economically backward or which are untouchable and also educationally and economically backward?

Mr. Pal. I respectfully submit that this is a list of all castes which in the opinion of the League are depressed classes; untouchability in the sense in which it is understood in Madras or Bombay does not exist here. Bhangi is the only caste that is universally untouchable, pollution by whose touch is regarded as something very undesirable. Here untouchability exists, of course, but in a very mild form or exists in some form or another in all the castes I have enumerated.

...

Sir Sunder Singh Majithia. How would you define depressed class people?

Mr. Pal. Not in the sense of the definition in Bombay and Madras but apparently here the Hindu class is divided into high and low castes. The problem is very acute, as acute as untouchability is in Bombay and Madras. I apply three tests, the first is we are socially despised; then there is economic backwardness; and educational bankruptcy.'

"In the most elaborate attempt to specify criteria by which to identify untouchable groups, J. H. Hutton, the 1931 Census Commissioner, proposed a series of tests which revolved around the incidence of disabilities:

1. Whether the caste or class in question can be served by Brahmans or not.

2. Whether the caste or class in question can be served by the barbers, water-carriers, tailors, etc., who serve the caste Hindus.

3. Whether the caste in question pollutes a high-caste Hindu by contact or proximity.

4. Whether the caste or class in question is one from whose hands a caste Hindu can take water.

5. Whether the caste or class in question is debarred from using public conveniences, such as roads, ferries, wells or schools.

6. Whether the caste or class in question is debarred from the use of Hindu temples.

7. Whether in ordinary social intercourse a well-educated member of the caste or class in question will be treated as an equal by the high-caste men of the same educational qualifications.

8. Whether the caste or class in question is merely depressed on account of its own ignorance, illiteracy or poverty and but for that, would be subject to no social disability.

9. Whether it is depressed on account of the occupation followed, and whether but for that occupation it would be subject to no social disability." [IBID. P. 125-128]

There is no doubt that disabilities, illiteracy, indigency, occupational humiliation and so on entered the verdict. Even serfdom, bonded labour and slavery have blacked out some of these vulnerable groups as non-perfons. But, broadly expressed, plural tests have been suggested in the past. Gallenter comments on this aspect;

"The insufficiency of any single test to identify the untouchables provoked a variety of responses on the Franchise (Lothian) Committee. Dr. Ambedkar, the leading untouchable spokesman, points out that the aim is to demarcate those who suffer from the contempt and aversion of higher caste Hindus: "It is a fatal mistake to suppose that differences in tests of untouchability indicate differences in the conditions of the untouchables." The crucial common element is the odium and avoidance of the higher castes. Once this element is present "the whole of the class of untouchables so ascertained must be taken into account for the purpose of representation without any further distinction between rich and poor, advanced and backward, educated and uneducated.... Both of these points were rejected by the dissenters, S. B. Tambe, C. Y. Chintamani, and R. R. Bakhale. They find that outside of Madras, Bombay, and the Central provinces, untouchables "do not form a distinct and separate element in the population." In the other provinces "untouchability... is the adjunct not of a person but of the occupation he occupies." The majority of the Committee, adhering to denial of access to temples and causing pollution by touch or approach as "generally accepted tests of untouchability" reiterated its conviction that the depressed classes should include only untouchables and not "those Hindus who are only economically poor and in other ways backward but are not regarded as untouchables." But in the face of conflicting estimates it confessed its inability to reach any conclusions about the untouchable population in the north and east.

The groups in this category were finally listed (i.e. scheduled) in 1936 for purposes of giving effect to the provisions for special electoral representation in the Government of India Act, 1935. The list finally promulgated did not correspond exactly with any of the earlier estimates: it hewed

closely to the low figures for Assam, the high figures for the United Provinces and Bihar and Orissa, and took a middle course in Bengal. In the event, the list reflected definitions of untouchability with an admixture of economic and educational tests and considerations of local politics. Lelah Dushkin observes that 'the authorities who made up the final list made quite a departure from the original strict criterion of untouchability ... many castes listed in the North would not have been included in the South. However, whatever the criterio were, all of the castes included in the final list were socially the lowest Hindu castes in their particular provinces and they were listed partly, at least, on that basis." [IBID. P. 129—130]

This backdrop leads us to an understanding of the concept of Scheduled Castes under the Constitution. The President is empowered to specify, after consulting with the Governor of a state, those "castes, races or tribes or parts of or groups within castes, races and tribes which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State ... (Art. 341 (2). A Scheduled Castes Order was promulgated by the President in 1950 which basically re-enacted the 1936 list.

"A few changes were made in 1951, but these were in the nature of adjustments and elimination of anomalies, rather than any basic change in policy. 'The 1951 census revealed that the Scheduled Castes contained over 52 million members. More discrepancies, errors, and oversights came to light, and in 1956 the lists were revised again. The principal changes were the addition of about a million persons each in Rajasthan and in U.P. and the inclusion now of all Sikh untouchables. The revised list contained 55.3 millions (using 1951 census figures). In the 1971 census, the Scheduled Castes contained 80 millions (14.6% of the population)." [Ibid. P. 132]

The many criteria entering the calculus of S.C. status have already been dealt with by me. Even so it is useful to quote Galanter again :

"With whatever admixture of other factors, the Scheduled Castes have been chosen primarily by the criterion of low social and ritual standing. In the selection of Other Back-

ward Classes, the use of social and ritual status as a criterion of the backwardness of the group has been severely restricted by the courts. But such criteria have been predominant in the selection of Scheduled Castes, who have been chosen precisely on the ground of their low social and ritual status in the traditional social hierarchy. The justification for employing low status and attendant disabilities as a criterion for preferences is that these groups are generally lowest in income, education, health, cultural resources, and economic opportunities. Generally, more than a mere correlation is implied. These castes are, in the prevailing view, backward because they were subject to disabilities which impeded advancement by individual effort and denied them opportunities for group social mobility.

"This emphasis has endured over the years. In the debate preceding passage of the 1976 amendments to the Scheduled Castes Order the view surfaced that it is basically the economic and social backwardness of a caste which should entitle it to be categorized as a Scheduled Caste'. But the Home Minister was emphatic in reiterating that the concept of Scheduled Casters is one of backwardness stemming from untouchability. 'It is not neglect, it is not mere poverty, it is not mere backwardness that entitles a man to come under the Scheduled Castes'.

Maype, untouchability is a sure indicium but other criteria are not contra - indicated. Says Marc Gallanter:

"It would seem that Parliament's power to designate Scheduled Castes is sufficiently broad to permit the use of standards which would decrease the role of ritual standing and disabilities and increase the emphasis on educational, economic, and cultural criteria. There is room for eventually changing the mix of ritual and other factors in the selection of Scheduled Castes. There has been some discussion about changing the mix — at least to the extent of applying economic and educational tests to de-schedule those groups which have allegedly been so benefitted that the correlation no longer holds." [IBID. P. 135-136]

One need not wrangle over the specifics but may broadly conclude that the Scheduled Castes are an unfortunate lot,

appreciably below the Backward Classes which are ordinarilly regarded as comprising Backward Classes.

The Scheduled Tribes are really the aboriginal people of India who retreated to secure places like hills when invasionary aryans pushed on. Things are not very clear about these wretched and vagrant and ancient inhabitants. The Constitution, instead of designating the characteristics of tribals, has left it to the President to specify the Scheduled Tribes for each State. Even so, the fact remains that well defined and easily ascertained criteria exist to distinguish the Scheduled Tribes. But it is significant to note that the tribes sometimes require a different kind of protection from the Constitution to preserve their identity, integrity and elimination of disability. The policy of protection of Scheduled Tribes demands special treatment. Altho' the S.C. and S.T. have many things in common vis a vis social backwardness, the thrust of the Constitutional provision is the eradication of the depressed status of both these classes so that they may play a role of dignified equality and participative decency in the mainstream of Indian democratic life.

A constitutional fundamental, surrounded by political confusion, needs repeated remembering if the very policy of annihilation of caste disabilities is not to be preverted into a fallacy of perpetual plea for prolongation of reverse discrimination by a section of the population which has substantially wiped out its base-born attributes and levelled itself up, thereby converting a remedy for underprivileged inequality into a malady of privileged inequality. Let me explain. The Constitution, responding to the political summons of distributive justice and equal sharing whereby the high and the low may fuse into one large national bloc and be integrated into a casteless, classless society, has justified protective discrimination. The idea is economically, educationally and socially to assimilate into a dynamic unity the whole community. Thus equality and excellence will blend and open non-discriminatory avenues of access to developmental opportunity for every member of the polity. Our purpose is end castes, not to pickle them. Our constitutional imperative is that castes shall perish as a source of ancient advantages or current disadvantages. Our country and culture have suffered enough thro' upper caste privileges and lower caste privations. To eradicate this communal disadvantage and to establish a people's solidarity

is the constitutional essence of 'fraternity', as Ambedkar explained with lucid emphasis and holistic humanism. Opposing the World War unleased by Nazis and exposing its fascist implications in a radio broadcast in those days, he synthesised conceptually the ideas of liberty, equality and fraternity. Speaking as Labour Party Leader he argued:

"Labour's conception of liberty is very positive. It involves the idea of Government by the people. Government by the people, in the opinion of labour, does not mean parliamentary democracy.

"Parliamentary democracy is a form of government in which the function of the people has come to be to vote for their master and leave them to rule. Such a scheme of government in the opinion of labour is a travesty of government by the people. Labour wants government which is government by the people in name as well as in fact. Secondly, liberty as conceived by labour includes the right to equal opportunity and the duty of the state to provide the fullest facilities for growth to every individual according to his needs.

"Labour wants equality. By equality labour means abolition of privileges of every kind in law, in the civil service, in the army, taxation, in trade and in industry, in fact the abolition of all processes which lead to inequality.

"Labour wants fraternity. By fraternity it means an all-pervading sense of human brotherhood, unifying all classes and all nations, with peace on earth and good will towards man as its motto." [B. R. Ambedkar, A study in Social Democracy — by G. S. Lokhande — P. 210—211]

In his historic address to the Constituent Assembly he elucidated the same point:

"What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equa-

lity cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value." [B. R. Ambedkar in the Constituent Assembly on 25—11—1949]

Until 'one man, one value' is actualised, fraternity is fiction. The conclusion is that measures we design must be means to the end. Therefore, the success of our strategies for salvaging the depressed sector of society must be judged by progressive pruning of socio-economic inequalities among communities and eventual of a broadly egalitarian fraternity. Perpetual continuance of special discrimination is a confession of failure of the projects until now operated. So, periodic 'audit of the performance of programmes calculated to eliminate injustices is necessary so that new methods may be innovated with dynamic potential. Otherwise, what is intended to improve the status of the pariah may become a vested interest in the noisy hands of other not- so-backward classes, leaving the pariah to languish, generating competitive grabbing of benefits by the better-off and destabilising the whole process by fuelling a furious kilkenny cat fight over 'reservations' and like provisions, where the final victims may well be the weakest 'antyajas' for whom the constitutional bells of favoured class benefits toll.

What is important if our vision of casteless, classless society is to be achieved is to adopt constant vigilance to monitor projects, to use the technique of *perestroika* from time to time so that the backward-most are brought forward and the substantially advanced, tho' technically backward, are bracketed with the non-backward classes. Re-structuring with this goal of egalitarian social locomotion is the challenge. The benefits of well-off categories being eliminated from the O B C, must be ploughed back to help the other humble categories like the Scheduled Castes and Scheduled Tribes. If a backward group has socially advanced, the quota for it may be stopped but made over to the S.C. and S.T. The focus is not on political exploitation thro' perpetuation of "backwardness" as a ballot-bagging device but a conscientious and socially sensitive undertaking to see that the most backward rise and the less backward are given a lift a little less, and by progressive stages, advancement of all weaker catogories is assured. In this perspective, the utmost effort must be made to raise the S.C./ST. categories. Among them there are layers upon layers and the attempt of the State must be to bring up the lowest layers such as the pariahs. There is need for sensitization of the very process of abolition of backwardness. A massive effort, whatever the investment, must be made to ameliorate the lot of the Bunghi in society; and whatever sacrifices in this war effort against backwardness must be cheerfully accepted by society. Otherwise, the tendency to lag and to exploit will mar the Indian social scene. How long! O Lord, how long! shall the chronic social have-nots wait for reaching better days!

SECTION—B

The culture of equality enshrined in the Constitution embraces strategies *one* of which is Reservation in the areas of education and public services. The myopic obsession with 'reservation' as the be-all and end-all of *dalit* deliverance and shudra salvation springs from a failure to take a holistic approach, a perverted politicisation of the process of uplift and a vicious casteification complex. Many other measures designed to raise the capabilities and status of the disadvantaged categories are essential, absent which 'reservation' may not deliver the goods. But there is no gainsaying the strategic value of these special "reservation" provisions in the progress of the social proletariat.

A general diffusion of literacy, a pervasive awareness of rights-a broad economic development and better ability to use the democracy of opportunities make real meaning so far as the human ascent of the nether world of dalits and backward-most groups is concerned. A few judges, some high officers, a sprinkling of ministers and handful of professionals and artists hardly touch the submerged immensity of the iceberg. Nay, these few fortunates sometimes get bourgeoisified, marry culturally in higher castes and forget about the down-trodden brotherhood. The goal is not middle class jobbery nor freak monetary luck for a few — some harijan on the high bench or some girijan director-general or stray millionaire from a very backward class. Destination Social Salvation demands the deliverance, economic, social and political, of the miserable masses enblock. Reservations and other hoisting devices have relevance only to the extent they advance the larger cause of social democracy. The problem of reservations, however, raises highly inflammable issues and hotly debated conceptional confusions. Indeed, unless a general national consensus and common political understanding on these basics is arrived at, incendiary polemics will burn up our values.

What are these fundamental concepts surrounding reservations? What is the judical light shed on them? How far does the Constitution help the nation navigate towards its equalitarian destiny?

Here a few other difficult dilemas and seeming contradictions need mention. Our Republic is determined to engineer into existence a casteless classless society and any method of abolition of disparities should not promote caste forces which defeat a casteless human order. Secondly, socialist dialectics demand emphasis more on *economic* determinants than *communal* factors. Chinnappa Reddy J. in *Vasantha Kumar* stressed:

> "However we look at the question of 'backwardness' whether from the angle of class, status or power, we find the economic factor at the bottom of it all and we find poverty, the culprit cause and dominant characteristic. Poverty, the economic factor brands all backwardness just as the erect posture brands the homosapiens and distinguishes him from all other animals, in the eyes of the beholder from Mars." (The Dynamics of Reservation Policy — Page 212).

The argument is that social ills have economic origins and agonising inequalities are rooted in the have-not syndrome. So much so, any diagnosis based on caste factor alone is less than scientific. First, casteism becomes constitutionalised — a paradox in a legel order anathematising caste and communalism. Secondly, the real stress on economic transformation as the decisive factor is obfuscated by communal dilution. Thirdly, a scientific utilisation of human resources insists on the best talent, regardless of caste and community considerations, being given the first chance to blossom—an approach which negatives quota, rota and other preferences departing from 'merit' as the sole guide. Fascinating but fallacious!

An ampler statement is needed to understand the battle now raging over the reservation issue, not from the politician's point of view nor from the communal leaders' interests but from the constitutional perspective. The Constitution is the conjunction and quintessence of the higher politics and basic Law of the nation. Reservation, as a policy, must be moulded by the provisions of part III, IV and XVI.

Now, a brief survey of the constellation of constitutional clauses is appropriate from the "reservation" perspective.

The Preamble, which is the ideological key to the Constitution pledges to secure social justice to *every* citizen in our ancient, static, hierarchical polity, It promises equality of status and opportunity hitherto denied to the vast majority of its members. So also, the assurance of the dignity of the individual, a radical expression for a people subjected to sub-human indignity. The Preamble, if seriously meant, is a project of heart surgery on a massive scale by restructuring the socio-economic system through Operation Social Homogenisation.

This egalitarian command is repeated and reified and specific strategies drawn up in the package of articles in part III. The Directive Principles reinforce the thrust of this socialistic objective. Part XVI is a final effort to catalyse the processes of cqual justice in its real-life aspects, especially in favour of the dalit sector otherwise referred to as Scheduled Castes and Tribes. Beyond reasonable doubt, the Founding Deed of our Secular Socialist Republic desiderates, as a vibrant value, equalization by legal

engineering of the desparately deep valleys of rural and urban penury.

Generalities require particularisation in such clear manner that judicial pedantry, elite politics and the Establishment's administrative ambiguities may not frustrate the Constitution's fundamental objectives. Of course, article 14 is the commandment of equal protection of the law. The Supreme Court has held that equality, as a rule of law, is part of the *unamendable basic structure* of the Constitution. I have said enough earlier in this essay to emphasise that a dynamic component of equality is the process of equalisation, embracing within its benign wings the weaker sector of society which undoubtedly includes SC/ST and the OBCs. Whatever noises may be made, whatever logic-chopping may be tried, equality is unamendable; and, if it includes reservation for caste and community nobody can avoid this imperative. And, from Aristotle we get the principle that equality consists in treating equals equally and unequals unequally.

> "The principle of equality, in other words, does not demand identity of treatment but allows and is compatible with many differentiations, provided however that these differentiations correspond with relevant differences." (The Equal Protection of The Laws — Duckworth — Page 7).

In its rigid, reactionary, status quo connotation equal protection of the laws may mean that even utter unequals, however dreadfully desparate, shall be treated equally. That is to say, iniquitious inequality writ large on society shall be maintained strictly. This disingenuous distortion is diametrically opposed to the sublime realism of Art. 14 as a promise of levelling up the lot of the lowliest segment. Procrustean equality is unconscionable cruelty, not humanist egalite.

The current judical thought in the Supreme Court reinforces this Socialistic semantics. In *Kerala Vs. Thomas* the ratio is reflected in the following passage:

> "To discriminate positively in favour of the weak may sometimes be promotion of genuine equality before the law' as Anthony Lester argued in his talk in the B. B. C. in 1970 in the series: 'What is wrong with the Law.' 'One law for the Lion and Ox is oppression'. Or, indeed, as was said of another age by Anatole France, 'The law in its majestic

equality forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread.' + Re-distributive justice to harijan humanity insists on effective reforms, designed to produce equal partnership of the erstwhile 'lowliest and the lost', by State action, informed by short-run and long-run sociologically potent perspective planning and implementation. An uneven socio-economic landscape hardly gives the joy of equal opportunity and development or draw forth their best from man-power resources now wallowing in the low visibility areas of discontented life.

145. The domination of a class generates after a long night of sleep or stupor of the dominated, an angry awakening and protestant resistance and this conflict between thesis i.e., the status quo, and anti-thesis i.e., the hunger for happy equality, propels new forces of synthesis i.e., an equitable Constitutional order or just society. Our founding fathers, possessed of spiritual insight and influenced by the materialist interpretation of history, forestalled such social pressures and pre-empted such economic upsurges and gave us a trinity of commitments — justice: social, economic and political. The 'equality Articles' are part of this scheme". (AIR 1976 SC 490 at page 530).

And the A. B. S. K. Sangh case echoes the same note:

"To the class of citizens who are economically and socially backward this guarantee will be no more than mere wishful thinking, and mere "vanity ...... wind and confusion", if it is not translated into reality by necessary State action to protect and nurture such class of citizens so as to enable them to shake off the heart-crushing burden of a thousand year's deprivation from their shoulders and to claim a fair proportion of participation in the Administration. Reservation of posts and all other measures designed to promote the participation of the Scheduled Castes and the Scheduled Tribes in the Public Services at all levels are in our opinion necessary consequences flowing from the Fundamental Right guaranteed by Article 16(1). This very idea is emphasised further by Article 16(4). Art. 16(4) is not in the nature of an exception to Article 16(1). It is a facet of Article 16(1) which fosters and furthers the idea of equality of opportunity

with special reference to an underprivileged and deprived class of citizens." (AIR 1981 SC 298 at Page 336).

Art. 15 prohibits discrimination on grounds of religion, race, caste, sex, birth-place, jointly or severally. But this rule of non-discrimation is not functionally hostile to *special provisions in favour of* unequal categories needing such rescue projects. This is evident from Art. 15(3) and (4) as well as Art. 16(4). A truncated construction put upon Arts. 15 and 16 depriving it of functional justice in *Champakam* was quickly corrected by introducing Art. 15(4) through the very 1st Amendment to the Constitution. Art. 15(4) is thus a rebuke for judges and a beacon for jurists.

Another principle of Indian Consitutional Law gains significance in this discussion. It is the role of the Directive Principles of State Policy (Part IV), popularly regarded as fabian socialist. Art. 37 declares them to be 'fundamental in the governance of the country' although not enforceable in courts of law. Art, 46, one such fundamental directive, obligates the State to 'promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.' Such a promotional measure to protect the weaker sections may well be by reservations and preferences. Protective discrimination is thus within the benign ambit of this rescue shelter. If Art. 46 is to be harmoniously read with Art. 14 to 16 the resultant interpretation may reconcile reservations and equal protection. Art 38(2), also a fundamental directive, commands the State to weave policies and projects calculated to eliminate inequalities in opportunities *amongst groups of people.* The direct impact of part IV on the 'equality' package in part III brodens the concept to permit special strategies which may be discriminatory, myopically viewed, but egalitarian, when eyed humanistically. There was a judicial superstition that part IV, expressly fundamental though, was of subordinate status vis a vis part III, based on the fallacy that what is justiciable belongs to the higher constitutional caste. After *Keshavananda*, *Thomas* and *A.B.S.K. Sangh*, parts III and IV are equal and integral. In *Thomas*, I observed:

"Keshavananda Bharati, AIR 1973 SC 1461 has clinched the issue of primacy as between Part III and Part IV of the

Constitution. The unanimous ruling there is that the Court must wisely read the collective Principles of Part IV into the individual fundamental rights of Part III, neither Part being superior to the other. Since the days of Dorairajan, 1951 SCR 525 (AIR 1961 SC 226) judicial opinion has hesitatingly tilted in favour of Part III but in Keshavananda Bharati the supplementary theory, treating both Parts as fundamental, gained supremacy. Khanna J. spoke with a profound sense of depth (if I may say so with respect) at P. 1878:

"The Directive principles embody a commitment which was imposed by the Constitution makers on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, and social backwardness. They incorporate a pledge to the coming generations of what the State would strive to usher in".

"What is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of an individual. The freedoms of a few have to be abridged in order to ensure the freedom of all. If the State fails to create conditions in which the Fundamental freedoms of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the privileged few must part with a portion of it".

The uphot, after Bharati, is that Art. 46 has to be given emphatic expression while interpreting Article 16(1) and (2). Indeed, Art. 335 is more specific and cannot be brushed aside or truncated in the operational ambit vis a vis Art. 16 (1) and (2) without hubristic aberration. (AIR 1976 SC 490 at page 534).

In A. B. S. K. Sangh (Railway), Ch innappa Reddy, J. explained:

"Because Fundamental Rights are justiciable and Directive Principles are not, it was assumed, in the beginning that Fundamental Rights held a superior position under the Constitution than the Directive Principles, and that the latter were only of secondary importance as compared with the Fundamental Rights. That way of thinking is of the past and has become obsolete. It is now universally recognised

that the difference between the Fundamental Rights and Directive Principles lies in this that Fundamental Rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive State action while the Directive Principles are aimed at securing social and economic freedoms by appropriate State action. The Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to Courts. So they are made justiciable. But, it is also evident that notwithstanding their great importance, the Directive Principles cannot in the very nature of things be enforced in a Court of law. It is unimaginable that any Court can compel a legislature to make a law. If the Court can compel Parliament to make laws then Parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in that sense that the Constitution says that the Directive Principles shall not be enforceable by Courts. It does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State. Article 37 of the Constitution emphatically states that Directive Principles are nevertheless Fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the Court to apply the Directive Principles in interpreting the Constitution and the laws. The Directive Principles should serve the Courts as a code of interpretation. Fundamental Rights should thus be interpreted in the light of the Directive Principles and the latter should, whenever and wherever possible, be read into the former. Every law attacked on the ground of infringement of a Fundamental Right should, among other considerations, be examined to find out if the law does not advance one or other of the Directive Principles or if it is not in discharge of some of the undoubted obligations of the State, constitutional or otherwise, towards its citizens or sections of its citizens, flowing out of the preamble, the Directive Principles and other provisions of the Constitution." (AIR 1981 SC 298 at page 335).

This jurisprudence of social justice has roots in statesmanship. Jawaharlal Nehru, although allergic to casteism, observed, in the controversial context of competing inequalities.

"We have to deal with the situation where for a variety of causes for which the present generation is not to blame the past has the responsibility. There are groups, individuals, communities, if you like, who are backward. They are backward in many ways — economically, socially, educationally — some times they are not backward in one of these respects and yet backward in another......" (Select Committee Report, Gazette of India 1951, Part II, N. 80 at 9616).

Again, in the aftermath of the *Champakam* road block, he said:

"In trying to attain equality we come up against certain principles of equality laid down in the Constitution. That is a very peculiar position. We cannot have equality because we cannot have non-discrimination for if you are thinking of raising those who are down, you are somehow affecting the status quo, undoubtedly. You are thus said to be discriminating because you are affecting the status quo". (Jawahar Lal Nehru's Speeches 1949-53 on "Equality and Backward Classes" p. 517-18 (1954).

American juristic thought has reflected the same conflicts that we find in India. The *Bakke* case (57 Lawyer's Edition 2D 750-U.S. Supreme Court Reports) is illustrative of this dilemma. Discrimination and equal protection, in the American context of Negroes and other "discreet and insular minorities" subjected to gross disadvantages, have received divergent interpretations depending on the social philosophy of the jurist or judge. Justice Holmes had long ago declared in grand prose:

"(a) Word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." (IBID. page 767).

And the Justices in *Bakke* did not rule out beneficial discrimination as obnoxious to equality, having regard to the realistic appraisal of racial handicap and the need for the State to adopt programmes of affirmative action to achieve the great goal of

equality set forth in the Constitution, Chief Justice Marshall was relied upon to give authority for the State to adopt and adapt Strategies:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." (57. L.E.d. 2d. page 845).

We must accept President Wilson's proposition that the Constitution "is not a mere lawyer's document: it is a vehicle of life and its spirit is always the spirit of the age."

The *Bakke* opinions, did agree 'that all reasonable methods be available to formulate an effective remedy'. "Any other approach would freeze the status quo that is the very target of all desegregation processes. "

Affirmative action programmes are necessary in legal life if equal law must impact on real life. And such projects are impossible in a neutral way. As Justice Blackmann in *Bakke* put it: "To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently". In Cardozo's profound words, "the great generalities of the constitution have a content and significance that vary from age to age." The Indian Constitution, candid and emphatic, has decreed 'special care' strategies to haul up 'the weaker sections of the people', and 'backward classes of citizens' (A. 15 and 16) especially the Scheduled Castes and Scheduled Tribes, (A. 335) the goal being a common destiny in an integrated nation through a fully participative democracy. These are facets of the evolving jurisprudence of Social Justice in a massive milieu of community — based injustice.

Now, a few issues of polemical moment demand our definitional and ideological attention. Are there inner contradictions between manoeuvres of caste-or-class based discrimination and the goal of a casteless-classless society? Is not caste-oriented preferment or priority prone to promote noxious communal pathology and political immortality for casteism and communalism, the very vice which disruptively menaces Indian progress?

What is a *caste* and can it be a *class* within the scope of Arts. 15 and 16? Is there a conceptual repugnancy in Arts. 15 and 16 accommodating *castes* for purposes of reservation? Put differently, can castes qualify for reservations under Arts. 15(4) and (16 (4)? What should be the criteria for 'backwardness' rationally related to progressive elimination of socio-cultural disparities and catalysation of classlessness? Should the *economic* criterion be the dominant determinant of eligibility for reservation? What other factors, including caste, are constitutionally permissible in identifying 'backwardness'? How can claims of *efficiency* and equality of merit and preference, be reconciled and, if so, how? Should, and if so, how should elimination of social backwardness be assessed and audited periodically to reduce reservations proportionately? Should a maximum percentage be fixed for reserved classes? If so, should it be for the annual intake or overall representation in the cadre? Are reservations at promotion stages and 'carry forward' year after year if shortfall occurs in any year, violative of the guarantee of equality and the efficiency of instituttons?

These questions are now fought in courts and streets because they have a developmental dimension and affects the human condition. Therefore, dogmas won't work and barren idelogies will freeze the warm blood of real life. Judicial pronouncements will remain printed futility unless social forces mould forensic mentations. The politics of the Constitution is higher than opportunist electoral politics. The problem of 'compensatory discrimination' and backward class reservations have to be debated with responsibility to reach fundamental solutions with a futuristic import. Let us take up the themes and issues from this wider vision.

We have the advantage of five judges of the highest court, in separate learned forensic foryas and essays, in *Vasantha Kumar vs. Karnataka.*

How complex and controversial protective 'reservation' as a state policy is and how difficult and multi-dimensional constitutionally sanctioned backwardness and its identification can be, may be gathered from the fact that even five radical judges of the highest court, after long arguments and longer reflection, have not been able to evolve a conceptual consensus and clarify guidelines regarding strategy. On the credal core implicit in Arts. 14 to 16, Art. 29(2), Arts. 46 and 335, all the five judges in the

Vasantha Kumar case, by their separate opinions, held that backwardness with its historical genesis and die-hard survival, is more than poverty simpliciter but, beyond that, accents vary and judicial nostrums defy unity. Each judge has, by his separate opinion, sought to illustrate the dynamics of reservation policy tuned to his social perceptions. Chief Justice Chandrachud, in what he calls a skeletal effort, has merely pleaded for a continuance of existing reservation formula in favour of Scheduled Castes and Scheduled Tribes for the nonce without the superimposition of a "means test". However, after a period of 15 *years*, judicially chosen by a strange hunch, the Chief Justice has adopted the application of an economic criterion even for the S.C./S.T. category by 2000 A.D. A new millenium alone, without terrific affirmative policy activism shaking up, with socialistic vigour, the stratified society into a new mobility, will not usher in freedom from backward suppression any more than pious prayers by orthodox priests can. The *ex cathedra* wish of the Chief Justice is welcome: "It is essential that the privileged section of the underprivileged society should not be permitted to monopolise preferential benefits for an indefinite period of time."

Again, Justice Chandrachud, without much argumentation, has, by way of ipse dixit as it were, held that other backward classes should be rigorously restricted by two tests: 'one, that they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness and two, that they should satisfy the means test such as a State Government may lay down in the context of prevailing economic conditions." This is positive proposal.

A periodic review of the policy of reservation in employment, education and legislative institutions has also been suggested by the Chief Justice with a view to a national debate and consequential correction. This is too general, yet a good suggestion.

Jusstice D. A. Desai has, in his separate opinion, blended poverty as a factor of backwardness and sought to formulate a policy in the direction of *destruction of caste structure*, and *promotion of the secular character* of the nation. The learned judge places maximum accent on the economic factor:

> "A time has come to review the criterion for identifying socially and educationally backward classes *ignoring the caste*

lable. The *only criterion* which can be realistically devised is the one of *economic backwardness*. To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the lead star. Why I say this?

Chronic proverty is the bane of Indian society. Market economy and money spinning culture has transformed the general behaviour of the society towards its members. Upper caste does not enjoy the status or respect, traditional, voluntary or forced any more even in rural areas what to speak of highly westernised urban society. The bank balance, the property holding and the money power determine the social status of the individual and guarantee the opportunities to rise to the top echelon." (DYNAMICS RESERVATION POLICY — P. 196)

"This approach seeks to translate into reality the twin constitutional goals: one, to strike at the perpetuation of the caste stratification of the Indian Society so as to arrest progressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the mainstream of life which means eradication of poverty." (IBID — P. 198)

However, Desai J. hastens to add that reservation in favour of S.C. and S.T. must continue, but injects an economic element into it:

"Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But *even here* economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position." (IBID — P. 198).

In short, caste, without more, meets with judicial dissatisfaction although some judges have taken the view that caste, when it substantially covers a backward class, may be a constitutionally valid group deserving of protective discrimination.

Justice A.P. Sen also opts in favour of '*class*' as distinguished from '*caste*' and economic privation as more decisive than social disablement:

> "In my considered opinion, *the predominant and only factor for making special provision under Art.* 15(4) *or for reservation of posts and appointments under Art.* 16(4) *should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to Scheduled Castes or Scheduled Tribes,* till such members of the backward classes attain a state of enlightenment and there is eradication of poverty amongst them and they become equal partners in a new social order in our national life." (IBID — Page 201)

The blended brew reveals the learned judge's mind but make the administrator's task messy. Justice Chinnappa Reddy faces the complexity of the dynamic issue of "socially and educationally backward classes" vis a vis social and economic justice. He attempts a helpful conceptualisation and crystallisation of guidelines in the confused milieu of deep economic, social and cultural and disparities desparingly vast and varied. He generalises his premise thus:

> "The Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes, all of whom have been compendiously described as 'the weaker sections of the people', have long journeys to make in the society. They need aid; they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity, and not charity." (IBID. Page 206).

He is critical of the merit-mongers and condemns their uppish approach.

> "One of the results of the superior, elitist approach is that the question of reservation is invariably viewed as the conflict between the meritarian principle and the compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched in the oasis of convenient

living and those who are still in the desert and want to reach the oasis. There is not enough fruit in the garden and so those who are in, want to keep out those who are out. The disastrous consequences of the so called meritarian principle to the vast majority of the under-nourished, poverty-stricken, barely literate and vulnerable people of our country are too obvious to be stated." (IBID. Page 207).

What is a backward class?

Chinnappa Reddy J. has an erudite, though imprecise, answer:

"So we have now noticed the historical and sociological background of Class and Caste, the philosophy, the reason and the rhetoric behind reservation and anti-reservation, the constitutional provisions and the varying judicial stances. What emerges from these three decades of Parliamentary, Executive, Judicial, Political, and Practical Wisdom? Clearly there exist large sections of people who are socially and educationally backward who stand midway between the forward classes such as the landed, the learned, the priestly and the trading classes on the one side and the out-caste and depressed classes, i.e. the Scheduled Castes and the Scheduled Tribes on the other. Poverty, caste, occupation and habitation are the principal factors which contribute to brand a class as socially backward. The customs which they honour and observe, the rituals which they fear and practice, the habits to which they adapt and conform, the festivals which they enjoy and celebrate and even the Gods that they revere and worship are enlightening, elements in recognising their social gradation and backwardness."

"Dress habits also throw light, while it is difficult to imagine, persons belonging to upper caste or occupational groups going about their daily work bare-backed it is not an uncommon sight to see persons belonging to lower caste or occupational groups so going about. Work habits also gave an indication. Women belonging to higher social groups would not generally care to serve in other people's homes or fields. Again children of lower social groups take to domestic and field work quite early in their lives."

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"There are many other customs, rituals or habits of significance which if one only cares to study them and mark out the socially backward classes. The weight to be attached to these factors depends upon the circumstances of the case which can only be revealed by thoughtful, penetrating investigation and analysis. It cannot be done by means of mathematical formula but only by looking in the round or taking a look at the entire situation." (IBID. Page 245-246)

Marxist thinking has not swept of Reddy J. into acceptance of the economic criterion as dominant although low caste and land-less lot as a feudal heritage, go together. A few excerpts from his judgment are refreshing reading:—

"Poverty, of course, is basic being the root cause as well as the rueful result of social and educational backwardness But mere poverty is not enough to invite the constitutional branding, because the vast majority of the people of our country are poverty struck but some among them are socially and educationally forward and others backward. In a country like India where a high percentage of people live below the bread-line, even the majority of the so called socially forward classes may be poor. For example, no one will think of describing Brahmins anywhere in the land as socially and educationally backward however, poor they might be. The idea that poor Brahmins may also be eligible for the benefits of Articles 15(4) and 16(4) is too grotesque even to be considered. Similarly no one can possibly claim that the Patels of Gujarat, the Kayasthas of Bengal, the Reddys and Kammas of Andhra Pradesh are socially backward classes, despite the fact that the majority of them may be poor farmers and agricultural labourers. In the rural social ladder they are indeed high up and despite the economic backwardness of sizeable sections of them, they cannot be branded as socially backward. On the other hand, there are several castes or other social groups who have only to be immediately identified as socially and economically backward classes."

"True, a few members of these caste or social groups may have progressed far enough and forged ahead so as to compare favourably with the leading forward classes econo-

mically, socially and educationally. In such cases, perhaps an upper income ceiling would ensure the benefit of reservation to such of those members of the class who really deserve it. Let one be entitled to ask what is to happen to the other sections of the forward classes? The State will have to — and it is the duty of the State so to do — discover other means of assisting them, means other than reservations under Arts. 15(4) and 16(4). All this only emphasises that in the ultimate analysis, settlement of economic equality is the final and the only solution to the besetting problems. There is also one danger in adopting individual poverty as the criterion to identify a member of the backward classes, which needs to be pointed out. How is one to identify the individuals who are economically backward and, therefore, to be classified as socially and educationally backward?" (IBID. Page 247-248).

His final conclusion is somewhat inconclusive and ambivalent for an administrator who wants to know with some certitude the constitutional dos and donts. The policy-maker pleads with their Lordships not for constitutional scholarship nor range of interpretive differences but for clear guidelines. But Vasantha Kumar is a learned package, not a practical guide-book.

Legal erudition? yes. Sociological lecture? yes. Constitutional philosophy? yes. Fool-proof directives? no. In excellent prose leaving the policy-maker gasping, Reddy J. winds up:

"So we have not noticed the historical and sociological background of Class and Caste, the philosophy, the reason and the rhetoric behind reservation and anti-reservation, the constitutional provisions and the varying judicial stance. What emerges from these three decades of Parliamentary, Executive, Judicial, Political and Practical wisdom? Clearly there exist large sections of people who are socially and educationally backward who stand midway between the forward classes such as the landed, the learned, the priestly and the trading classes on the one side and the out-caste and depressed classes, i.e. the Scheduled Castes and Scheduled Tribes on the other. Poverty, caste, occupation and habitation are the principal factors which contribute to brand a class as socially backward. The customs which they honour and

observe, the rituals which they fear and practice, the habits to which they adapt and conform, the festivals which they enjoy and celebrate and even the Gods that they reserve and worship are enlightening elements in recognising their social gradation and backwardness." (IBID. Page 245).

In the longest opinion in the case, Venkataramiah J. after a survey of case-law, takes the view that O. B. Cs must be comparable to S.C./S.T.s, which means many castes now privileged to be 'back-ward' may suffer 'forward' privation of advantages. But as a compassionate gesture, the learned judge observes:

"At this stage it should be made clear that if on a fresh determination some castes or communities have to go out of the list of backward classes prepared for Article 15(4) and Article 16(4) the Government may still pursue the policy of amelioration of weaker sections of the population amongst them in accordance with the directive principle contained in Article 46 of the Constitution. There are in all castes and communities poor people who if they are given adequate opportunity and training may be able to complete successfully with persons belonging to richer classes. The Government may provide for them liberal grants of scholarships, free boarding and lodging facilities, free uniforms, free midday meals etc. to make the life of poor students comfortable. The Government may also provide extra tutorial facilities, stationery and books free of cost and library facilities. These and other steps should be taken in the lower classes so that by the time a student appears for the qualifying examination he may be able to attain a high degree of proficiency in his studies." (IBID. P 302).

At the end of it all, we are at a loss to know the how, who and why of backwardness, dazzled by the blinding light of learning and glitter of language. But the social victims and the policy-maker are sadder, not wiser. We are under the Constitution but the Constitution is what the judges say it is. And if judges interpret in opposing trends with convincing arguments, Governments find themselves in a quandary at a time when clear-cut action is paralysed by judicial confusion.

As Macaulay once remarked, a debating society cannot lead an army. And the Indian Supreme Court debates too long, pro-

nounces too late, differs too sharply and paralyses processess too frequently, even blindly, that on national issues of moment this apex institution is becoming 'curiouser and curiouser', even an unlimited liability.

SECTION. C

The many projects to lift the victim sector have been trumpeted about but for long they have drawn a blank. Today the dalits reject them as the opium of the depressed people. Their hunger for dynamic development from the lowly level to equal status is reflected best in Dr. Ambedkar's demand for a New Order — not mere political freedom for the country but social liberation of the people. He argued for a New India beyond Quit India. External independence of the nation does not negative internal slavery of the masses. Indeed, the first half of our century made *India* free, but the second half must make *Indians* free. This desideratum means that the caste system be crushed and the *panchamas* and Bhramanas become homogenised. This process is gradual, and Ambedkar had a vision of the rainbow of this rise. He knew his community to be *Mooka* (the dumb) and the Bahishkrit (the excommunicated) and envisaged their being absorbed into the *Janatha* (the people) through insistance on *Samatha* (equality) so that Indians everywhere did become one as members *Parabudha Bharatha* (Enlightened India). How significant was this progression of ideas!

> "He started his Weekly, Mooknayak or the Leader of the Dumb, in 1920. The name is suggestive of its aim and purpose. It consistently and systematically sought to educate the helpless dumb millions about their pitiable plight and the need for revolting against injustice and atrocities.
>
> The name of the Weekly was changed into Bahishkrit Bharat, or "ex-communicated India" in the year 1927. The significance of the new name lies in the fact that most of the Untouchables were kept segregated from the various villages in India by a Ves (gate or wall) which they were forbidden to enter. Through his writings in the Weekly, Ambedkar exhorted the Untouchables to rise in revolt against the Shastras which sanctified the oppressive social customs. He

also sought to make the caste Hindus aware of their responsibility for the welfare and uplift of the downtrodden.

In 1930, the name of the Weekly was changed into Samata, which meant, "Equality", in order to propagate the ideal of equality. It ceaselessly pleaded for the removal of all the existing barriers between the caste Hindus and the Untouchables so as to establish an integrated society in which all the people will have equal share in all the branches of national life.

Again in 1931, the name of the Weekly was changed into Janata, that is, "the People". The journal now made in its mission to educate the people in citizenship rights and responsibilities. It also sought to make the people aware of their patriotic duty to protect the independence and integrity of the country.

once again, in 1956, the Weekly was baptized and renamed, Prabhuddha Bharat which means "Enlightened and Self-Disciplined India". [B. R. Ambedkar — A Study in Social Democracy — P. 230-231]

Dr. Ambedkar found Untouchable India more or less like apartheid Africa. Let me quote him:

"The Hindu society insists on segregation of the quarters of the Untouchables. The Hindu will not live in the quarters of the Untouchables and will not allow the Untouchables to live inside Hindu quarters. This is a fundamental feature of untouchability as it is practised by the Hindus. It is not a case of social separation, a mere stoppage of intercourse for a temporary period. It is a case of territorial segregation and of a cordon sanitaire putting the impure inside a barbed wire, into a sort of a cage. Every Hindu village has a ghetto. The Hindus live in the village and the Untouchables in the ghetto."

Therefore, Dr. Ambedkar came to the conclusion that nowhere except in India there existed permanent segregation camps and there had never been a case of a people, treating a section of their own people as permanent and hereditary slaves. Untouchability was a unique phenomenon unknown

to humanity except the Hindus. Ambedkar proves this by citing the example of the condition of the Untouchables during the period of the Peshwas." [IBID. P. 157-158]

The British never bothered about the misery of Indians and were concerned only with the squeezing India to British benefit regardless of the cost of the top heavy administration. As a sociologist he discovered British callousness and wrote:

"There is no doubt that out of all proportion to the means of the people, it is the costliest government in the world. This again may not appeal to you and you may say that no cost is too great for maintenance of law and order in this country. But there is one thing that I think must appeal to you and that is the poverty of the people. Is there any parallel to poverty of the Indian people in any part of the world? In the first quarter of the nineteenth century when the British rule in India had become an established fact, there were five famines with an estimated loss of 1,000,000 lives. During the second quarter of the century there were two famines with an estimated mortality of 400,000. During the third quarter there were six famines with a recorded loss of life of 5,000,000. And during the last quarter of the century what do we find? Eighteen famines with an estimated mortality which reaches the awful total of 15,000,000 to 26,000,000. And this does not include the many more millions (over 6,000,000) in a single year kept alive by Government doles. Gentlemen, what must be the cause of this? In plain terms the cause is the deliberate policy pursued by the British in the governance of this country. The aim of the British Government all along has been to discourage the growth of trade and industry in this country." [IBID. P. 159]

Ambedkar made a distinction between the politics of the Swaraj and the suppression of the masses:

"It was due to the reason that, a patriot and a nationalist in India is one who sees with open eyes his fellowmen treated as being less than men. But his humanity does not rise in protest. He knows that men and women for no cause are denied their human rights. But it does not prick his

civic sense to helpful action. He finds whole classes of people shut out from public employment. But it does not rouse his sense of justice and fair-play. Hundreds of evil practices that injure man and society are perceived by him. But they do not sicken him with disgust. The patriot's one cry is power for him and for his class. I am glad I do not belong to that class of patriots. I belong to that class which takes its stand on democracy and which seeks to destroy monopoly in every shape and form. Our aim is to realize in practice our ideal of one man, one value in all walks of life — political, economic and social." [IBID. P. 160 — (Speech before the Round Table Conference — Ist Session Proceedings P. 438-441),

He was a patriot par excellence and insisted that every Indian including every untouchable and unapproachable shall be equal. Here he was afraid that human rights had to be guaranteed if the down-trodden were to have a fair deal.

These prefatory observations lead us to a statement of the problem of reservations under the Constitution, the social malady and the legal remedy and the iatrogenic fall-out which has often made the remedy aggravate the malady.

Equality is the activist principle of democracy in its plural dimensions social, economic and political, and the genius of our Socialist Republic underscores social and economic justice as a basic creed, Independence, in its Indian achievement, has a socio-economic succulence and one of its greatest imperatives is positive abolition of a die-hard backwardness which stultifies the reality — not the formality — of equal opportunity. There have been, over the centuries, in our society terrible disparities and humiliating handicaps inflicted on large groups and communities. The caste system, with its fourfold divisions, has suppressed and strangled human numbers based on their birth and alienated them from the title to equality in the quality of life and the right to rise to excellence on fair terms of competition. Barbarized beneath even the Shudra caste and other vocational reproachability, have been the *panchama* proletariat reduced to serfdom and bonded labour as the eternal tenants of an exploitative system, and struggling at the bottom of the feudal pyramid structured in rigid decks of graded inferiority. This homo hierarchicus

syndrome deprived those born into the humbler castes and the panchama fold equality before God and Man and banished them from the banquet of civilisation. If democracy means equal cultural and economic potential, our caste-ridden, communally divided Bharat, with its freezing feudal gradations, medieval occupational prescriptions and manifold other temporal-spiritual proscriptions has sterilized all but the upper classes of the legitimate share in the national power processes, material resources and many-sided advances. The stark social realities when India became free were a challenge to the social conscience of the Republic; and human justice, an inalienable component of social and economic liberation, dictated that the hitherto depressed and oppressed classes be levelled up as a basis for real deliverance and equal developmental race. The desparately disadvantaged human categories — and they were large — could never dream of democratic participation without shaking off the socio-economic shackles and cultural inhibitions which dehumanised them *as a class* and froze 'the genial current of their soul'. Their wretchedness was not merely an individual stigma but a communal degradation. This 'pariah-hood', 'panchama' membership, 'Shudra' station — these group pollutions, regardless of individual worth, resulted in the alienation and insulation of the masses and deprivation of basic human rights. These *less miserables* were subject to group degradation, as base-born, to individual privation, in education, temple entry, decencies of life, public participation, economic pursuits and cultural development. The caste and the community, *not the particular person or family*, was the indelible birth-taint and delinquent caste-brand that disqualified the pariahs and the shudras and like groups and banished them from eligibility for worship and vedic learning, for equal mingling and sharing in land ownership, respectable dress and vocation, participation in public life, administration and other socio-economic functions. Thus socially and economically ostracized, culturally and spiritually submerged, whole castes and clans and categories suffered eclipse. Freedom and self-government, for these downtrodden masses, were teasing illusions and false enchantments, and periodic electoral convulsions were more a dope of promise than hope of justice. Thus the founding fathers, on winning Independence, following on the footsteps of social reformers, spiritual radicals and political revolutionaries, realised the need for a dynamic human order spelt out in Art. 38 in which justice,

social and economic, not merely political, shall enliven national life. Art. 38(2) runs thus:

> "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

The constitutional philosophy of dynamic equality and processes of equalisation has been eloquently expounded by Bhagwati in a different context and that meets the critics of special provisions to hoist the backward. He argues:

> "Anyone any where, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility; speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. However, departure may justifiably be made from the principle of selection based on merit. The concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. In a hierarchial society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote

collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inquality, in fact, legal equality always tends to accentuate it. Equality in law must produce real equality; de jure equality must ultimately find its raison d'etre in de facto equality.

"The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education and social environment, equal in specified areas. The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals." (AIR 1984 SC 1420)

Justice Chinnappa Reddy in *Vasantha Kumar* drove home this point tersely:

"Ours is a country of great economic, social and Cultural diversity: Often we take great pride in the country's cultural diversity. While cultural diversity adds to the splendour of India, the others add to our sorrow and shame. The social and economic disparities are indeed despairingly vast. The Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes, all of whom have been compendiously described as 'the weaker sections of the people', have long journeys to make in the society. They need aid, they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity and not charity. The days of Dronacharya and Ekalavya are over. They claim their constitutional right to equality of status and opportunities and economic and social justice. Several bridges have to be erected, so that they may cross the Rubicon. Professional education and employment under the State are thought to be two such bridges. Hence the special provisions for advancement and

for reservation under Arts. (15 (4)) and 16 (4) of the Constitution."

(Dynamics of Reservation Policy — Page 206).

To identify the victims of gross inequality is important if the remedial process is to prove effective. We must locate the virus before injecting the right antibiotic. Here dawns the fundamental fact that the numerous individuals, wallowing in backwardness, suffer damnation not qua specific handicapped persons but because they belong to a condemned *caste*. It is a *collective* sin, not a *personal* failing. A Shudra genius or panchama prodigy had to stand untouchably, even unapproachably afar, succumb to illiteracy, landless penury and occupational baseness and even resign himself to serfdom, in extreme cases. If *group degradation* be the disablement, *group regeneration* is the solvent. This analysis takes us to the conclusion that the lowly caste factor is a principal reason for social privation. And it is not caste *simpliciter* that blights its members. It is certain obnoxious attributes of the baser born that tarnish them; and they are meaner occupation, desparate indigency, taboo on temple entry and scholarship, fatalist disinclination for self-advancement and educational excellence, untouchability, rural primitivity, feudal frown on land ownership and even treatment as chattel. This Social Justice and equal protection of the law are noxiously negated by layer upon layer of environmental infliction keeping moribund the right to rise to the free expression of the human potential of the whole caste or class. The restoration of full personhood to such categories must antidote, on a collective basis, not with individual minuteness, their pronounced group deficiencies. That means educational and economic backwardness, essential incidents of *panchama* plight and Shudrahood, must be combated by correctional technology which gives better opportunities and facilities and incentives reaching down to the victimised limbo of rightless humans. Beyond disabilities, educational and economic and, indeed, as their pathological source and matric, is the *social* curse of the depressed caste. Any social scientist will agree that merely correcting the educational-economic imbalance will not be enough and may not be successful if the panchama-shudra caste factor is allowed to fester. Any social diognostician will also testify that educational, occupational and economic uplift of a caste, in substantial measure, will, in turn raise the status of the caste, make

it respectable, reputable and regenerate and obliterate those deep disablements which disqualified its members from being mainstreamed into the national life. This logic leads us to the holistic perspective behind the constitutional provisions designed to restore to the triple facets of democratic equality those large chunks of people who, until now, had been strangers, by and large, to the egalitarian fruits of Independence.

Our Founding Deed, with its dual accent on democracy and socialism, has a dynamic homogenisation jurisprudence, based on 'one man, one value'. Even American Law, with its equality accent and despite its *Dred Scott* judicial disgrace, is ready for benign discrimination as a strategy of equalisation in the race-conscious nation's march towards equality. The *Bakke* case, decided by the Burgher Court, is instructive to establish the hollowness of the plea that 'reservations' are a negation of equality (guaranteed under their IVth Amendment).

Justice Thurgood Marshall's voice in Bakke rings back with Indian echo if we make a few substitutions: It is because of a legacy of unequal treatment that we now must permit the institutions of this Society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors of those posts have been shut to Negroes. If we are ever to become a fully integrated society, one on which the colour of a person's skin will not determine the opportunities available to him or her, we must be willing to open those doors. I do not believe that any one can truly look into America's past and still find that a remedy for the effects of that past is impermissible.

Before entering the area of constitutional law and appreciating its rationalist-humanist imperatives and objectives, let us set down the basic positions which a dialectical student of our Society and its struggle for Freedom would realistically reach. India is not merely a territorial fact nor a political warehouse of millions of humans of graded inequality but a vibrant people with the same title to share in the resources of this great land. In short, India means Indians, and Indians are equal. No quantum jump of humanism is needed, in the land of the *samata* of the Buddha and the advaita of the Hindu, the brotherhood of man of Christ and of Islam and the secularism-cum-socialism of

the radicals affected by the West, of the sarvodaya and antyodaya of Gandhi, the dynthesised materialist- spiritualist religion of Vivekananda and of the great social and religious reformers' social justice fury of that stormy symbol of the dalits Dr. Ambedkar, to sentence to death all the ignoble, suppressive practices and debilitating divisions in Indian society based on religion, denomination, sect and school, and to bring to life the tremendous truth that Free India is the heritage and estate of the littlest Indian in the social, economic and political dimensions of democracy. The profound reality, not the primrose romance, of the first five revolutionary words of the Constitution "We The People of India", is that there is a distributive and collective sovereignty vesting even in the proletarian and the pariah of Bharat. To dismiss this great phrase as claptrap is to play traitor to the sublime essence of the suprema lex.

The conventional concept of democracy as a ballot-box phenomenon and a parliamentary process does not adequately project its economic and social dimensions. Moreover, the human resources, even talent reservoirs, of a nation are its real wealth and developmental potential. And this intangible asset is spread over its plebian as well as its patrician layers And the *shudra-Panchama* sector is a substantial portion of our populace and its latent capabilities in the field of science and art, generation of wealth and advance in other fields are a treasure of Bharat. To benumb the shudra masses and to deaden the depressed classes is a national disaster. Once you remove those environmental inhibitions which scotch their personality they will blossom. Chinnappa Reddy, J. in *Vasantha Kumar*, observed:

> "Is not a child of the Scheduled Castes, Scheduled Tribes or other backward classes who have been brought up in an atmosphere of penury, illiteracy and anti-culture, who is looked down upon by tradition and society, who has no books and magazines to read at home, no radio to listen, no T.V. to watch, no one help him with his homework, who goes to the nearest local board school and college, whose parents are either illiterate or so ignorant and ill-informed that he cannot even hope to seek their advice on any matter of importance, a child who must perforce trudge to the nearest public reading room to read a newspaper to know what is happening in the world, has not this child got merit

if he, with all his disadvantages is able to secure the qualifying 40 per cent or 50 per cent of the marks at a competitive examination where the children of the upper classes who have all the advantages, who go to St. Paul's High School and St. Stephen's College, and who have perhaps been specially coached for the examination may secure 70, 80 or 90 per cent of the marks? Surely, a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life. If spring flower he cannot be, autumn flower he may be, Why then, should he be stopped at the threshold of an alleged meritarian principle? The requirements of efficiency may always be safeguared by the prescription of minimum standards. Mediocrity has always triumphed in the past in the case of the upper classes. But why should the so called meritarian principle be put against mediocrity when we come to Scheduled Castes Scheduled Tribes and backward classes?" (Dynamics Reservation Policy — Pages 207-208).

If justice is what justice does, it is a revolutionary compulsion of *poorna swaraj* that our Republic shall engineer a fair deal in education and employment to the *dalit* layers and mobilise shudra power harnessed to national progress. The creative intelligence of the Constitution inspires this radical-humanist jurisprudence.

Without a revolutionary theory there can be no revolutionary movement (Lenin).

A process of redressing the social injustice of centuries by measures of compensatory group justice is thus a felt necessity of our times. Merely to illustrate this spiritually sensitive socialistic perspective, let me cite that cyclonic sadhu, swami Vivekananda at the turn of the century when Socialism was a dreaded word:

"The peasant, the shoe maker, the sweeper, and such other lower classes of India have much greater capacity for work and self-reliance than you. They have been silently working through long ages, and producing the entire wealth of the land, without a word of complaint. Very soon they will get above you in position. You have so long oppressed these for bearing massess; now is the time for their retribution....."

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"But times have changed. The lower classes are gradually awakening to this fact and making a united front against this, determined to exact their legitimate dues...... The upper classes will no longer be able to repress the lower, try they ever so much."

(Socio-Political views of Vivekananda — By Binoy K. Roy — Pages 32 and 33).

In *N. M. Thomas*, I stated:

"To discriminate positively in favour of the weak may sometimes be promotion of genuine equality before the law" as Anthony Lester argued...........

"Re-distributive justice to harijan humanity insists on effective reforms, designed to produce equal partnership of the erstwhile 'lowliest and the lost', by State action, informed by short-run and long-run sociologically potent perspective planning and implementation." (AIR 1976 SC 490 at Page 530)

This Operation Equalisation, Destination Equality is the theme of the Indian Odyssey vis a vis the deliverance of the backward classes. Reservations are but one of the major means towards effective equalisation and fundamental equity under our constitutional order.

In *A.B.S.K. Sangh* the root thought rationalising reservation as a process of equalisation has again been spelt out:

"This agonising gap between hortative hopes and human dupes vis a vis that serf-like sector of Indian society, strangely described as Scheduled Castes and Scheduled Tribes (SCs and STs, for short) and the administrative exercises to bridge this big hiatus by processes like reservations and other concessions in the field of public employment, is the broad issue that demands constitutional examination in the Indian setting of competitive equality before the law and tearful inequality of life." (AIR 1981 SC 298 at Page 300)

Again the Court ratiocinated:

"So, we have it that the constitutional goal is the establishment of a Socialist Democracy in which Justice, economic, social and political is secure and all men are equal and have equal opportunity. Inequality, whether of status, facility or opportunity is to end, privilege is to cease and exploitation is to go. The underprivileged, the deprived and exploited are to be protected and nourished so as to take their place in an egalitarian society. State action is to be towards those ends."

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"It is illustrative of what the State must do to wipe out the distinction between *egalite de droit* and *egalite de fait*. It recognises that the right to equality of opportunity includes the right of the underprivileged to conditions comparable to or compensatory of those enjoyed by the privileged. Equality of opportunity must be such as to yield 'Equality of Results' and not that which simply enables people, socially and economically better placed, to win against the less fortunate even when the competition is itself otherwise equitable. John Rawls in 'A Theory of Justice' demands the priority of equality in a distributive sense and the setting up of the Social System "so that no one gains or loses from his arbitrary place in the distribution of natural assets or his own initial position in society without giving or receiving compensatory advantages in return". His basic principle of social justice is: 'All social primary goods — liberty and opportunity, income and wealth and the bases of self-respect are to be distributed equally unless an unequal distribution of any or all these goods is to the advantage of the least favoured. One of the essential elements of his conception of social justice is what he calls the principle of redress: "This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural "endowment are undeserved, these inequalities are somehow to be compensated for." Society must therefore treat more favourably those with fewer native assets and those born into less favourable social positions. If the statement that 'Equality of opportunity must yield Equality of Results' and if the filment of Art. 16(1) in Article 16(4) ever needed a philo-

sophical foundation it is furnished by Rawl's Theory of Justice and the Redress Principle." (AIR 1981 SC 298 at Pages 335-36)

The democratic dogma of adult franchise is good so far as it goes but in a society of class cleavages and caste conflicts the political process may wobble or vitiate real equality to weaker groups. The American jurisdiction has developed similar judical thought which has some relevance to the Indian situation:

"The justification most often advanced for the special treatment of some legislative classifications is the need to protect certain groups which are 'discrete and insular minorities' and which are thought to be 'relatively powerless to protect their interests in the political process'. This was first articulated by Justice Stone in his famous footnote in United States v. Carolene Products Co."

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"... 'Prejudice against discrete and insular minorities may be a special condition, which tends to curtail the operation of those political processes ordinarily to be relied upon to promote minorities, and which may call for a correspondingly more searching judicial inquiry'. Powerlessness in the political arena is, then, the basis of this justification for protecting certain minority groups." (The Equal Protection of The Laws — Duckworth, Page 240).

Socio-historically sunken groups

"are 'not always assured of a full and fair hearing through the ordinary political processes not so much because of the (presence) of outright bias but because of the abiding danger that the power structure — a term which need carry no disappearing or abusive overtones — may incline to pay little heed to even the deserving interests of a politically voiceless and invisible minority'. (IBID – P. 240/241)

Dr. Polyviou, in his "The Equal Protection of The Laws", advances a further relevant variant:

"Two subsidiary variants of the 'discrete and insular minorities' thesis have also been suggested. One is that the

Court must extend special protection not so much to minorities or even insular and discrete minorities as to disadvantaged groups, namely groups which have been subjected to a history of persistent discrimination and which as a result have been precluded from effective access to the political process. Women, for instance, are not a minority, but they have in the past been the victims of pervasive discrimination which has 'relegated (them) to a position of political powerlessness'. They, and similar historically disadvantaged groups are therefore in need of 'extraordinary protection from the majoritarian political process'." (IBID — Page 241).

The function of law is to produce effect and so, the equality mandate must prove its worth by performance. If race and caste, place of birth and other group disability inflict inequality, equal opportunity remains a legal mirage until result-effective measures neutralises and nullify these deadly depressants. Justice Frankfurter has illumined this idea:

"The equality at which the Equal Protection Clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the equal protection of the laws and laws are not abstract propositions. They do not relate to abstract units A, B & C, but are expressions of policy arising out of special difficulties addressed to the attainment of specific needs by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." [Quoted in AIR 1951 Madras 127]

Equal law, in its constitutional conscience and puissance, must rush, with fire-fighting potency, to the rescue of powerless groups. That is integral to Social Justice jurisprudence. That is the functional fulfilment of the doctrine of 'equality of results' which is the Preambular Promise. "The philosophers have only interpreted the world in various ways; the point is to change it", — (Karl Marx). This is the call of the Constitution in Arts. 14 to I6, 38, 46, 335 and the rest of Part XIV. Shall we respond? Dr. Ambedkar with far-sighted thought, did stress this facet of equal justice to marginalised minorities.

SECTION D

The first socialistic charge on the State is the levelling up of the Scheduled Castes and Scheduled Tribes, perhaps the Fourth World in our Third World. They call themselves *dalits* but the Constitution designates them colourlessly as Scheduled Castes. They are either in the lowest rung of the shudras or outside the fourfold castes, being panchamas. Socially, the most fallen, economically, the lowliest proletariat, educationally, the dismally illiterate, and politically, the gullible victims of upper caste cunning, the Scheduled Castes are the humblest human block sans rights, sans land, sans literacy, sans everything. And yet they are around 15% of India's population. No clear critesion nor connotative definition is given by the Constitution, but Art. 341 empowers the President to "specify the races or tribes or parts of or groups within castes, races or tribes which shall, for the purposes of this Constitution be deemed to be Scheduled Castes". Parliament may legislatively modify that list. A conspiracy of victimising cirumstances 'backwardizes' them *as a group*. The standards which determine their historically die-hard, dire status are not specific but their identity is not difficult to fix. Our major attempt was made, in a 1967 bill, to include women who married Scheduled Caste men, to exclude from Scheduled Tribes converts to Christianity and Islam and to ensure territorial mobility for S.T. people. The bill lapsed, and Caste still plays a decisive part. Definitionally, as has been pointed out in *Thomas*, Scheduled Castes may not be castes, may be races or tribes or parts of or groups within castes or races or tribes:

> "We may clear the clog of Art. 16 (2) as it stems from a confusion about caste in the terminology of Scheduled Castes and Scheduled Tribes. This latter expression has been defined in Arts. 341 and 342. A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President. To confuse this backward-most social composition with castes is to commit a constitutional error, misled by a compendious appellation. So that, to protect harijans is not to prejudice any caste but to extend protec-

tive discrimination to this mixed bag of tribes, races, groups, communities and non-castes outside the four-fold Hindu division is not to compromise with the acceleration of caste-lessness enshrined in the sub-article. The discerning sense of the Indian Corpus Juris has generally regarded Scheduled Castes and Scheduled Tribes, not as caste but as large back-ward group deserving of societal compassion". (AIR 1976. S.C. 490 at p. 535).

Those Hindu human groups with an 'untouchable' heritage of social handicaps, sometimes forming castes, races, tribes or parts thereof are bracketed together and scheduled.

Before actually discussing the upgradation processes of the S.C./S.T. groups two questions may be briefly referred to. A new tendency have developed in many States for certain vocal com-munal categories which are backward, but not as backward as to deserve inclusion in the S.C. list to campaign for the benefits of S.C. through political pressures and other research strategems. When this strategy succeeds, the consequential adulteration adversely affects the dismal *paraya* layers. Secondly there is an influential move to include among the S. C.s. large numbers of converts who have left Hinduism to better their economical and social lot. They are treated as backward classes, but clamantly demand all the benefits of the S.Cs. While it is true that reli-gious conversion is often an economic illusion, it is a moot ques-tion whether they should be classed with the S.Cs. diluting the percentage and weakening the chances of the Hindu Dalit brac-kets. No final verdict is possible without a national debate on the issue. Parliament has more than once rejected this claim, although, the political clout of the Church still keeps the issue alive. Perhaps there is some force in the demand for social justice

It is necessary that Chinnappa Reddy (J) should be quoted to impart social realism to conversion and re-conversion of the Scheduled Castes and the social impotence of such religious barter.

"The practice of caste however repugnant it may appear to our moral and social sense, is do deep-rooted in the Indian people that its mark does not seem to disappear on conver-sion to a different religion. If it disappears, it disappears

only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion. In Andhra Pradesh and in Tamil Nadu there are several thousands of Christian families whose forefathers became Christians and who, though they profess the Christian religion, nonetheless observe the practice of caste. There are Christian Reddies, Christian Kammas, Christian Adi Andhras, Christian Adi Dravidas and so on. The practice of their caste is so rigorous that there are intermarriages with Hindus of the same caste but not with Christians of another caste. Now, if such a Christian becomes a Hindu, surely he will revert to his original caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the caste-hold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion." [— AIR 1984 S. C. 411]

In this context, a complementary judicial dictum of Pathak (J) needs citation:

"The essence of the petitioner's case is that he was a Hindu belonging to the Adi-Dravida caste and on conversion to Christianity he continues as a member of that caste. The Adi-Dravida caste is one of the castes enumerated in the Schedule to the Constitution (Scheduled Castes) Order, 1950. The petitioner alleges that he has been denied the benefit of welfare assistance intended for Scheduled Castes on the ground only that he professes the Christian religion, and he contends that in as much as such discrimination has been effected pursuant to the provision contained in paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, that provision is constitutionally invalid."

"The main question debated before us is whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity. Cases decided by this Court and by the High Courts bearing on the point have been cited on both sides of the line, and our attention has been invited to text books, commentaries and Commission Reports, some of which contain the observation that depressed groups and castes are to be found not only among Hindus and Sikhs but also among Muslims and Christians. It appears to us unnecessary in this case to enter upon that question and to decide whether a Hindu belonging to the Adi-Dravida caste continues to be a member of that caste on his conversion to the Christian religion.

"We shall assume, for the purpose of this case, that the caste is retained on conversion from one religion to the other. The real question is whether on the material before us it can be said that in confining the declaration to members of the Hindu and the Sikh religions, paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against, members of the Christian religion.

"Now it cannot be disputed that the caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystallised into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilised society, and were indeed not even "touchable". This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness. And through most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny, and despite the efforts of several noted social reformers, specially during the last two centuries; there has been a crying need for the

emancipation of the depressed classes from the degrading conditions of their social and economic servitude. Dr. J. H. Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Caste. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. During the framing of the Constitution, the Constituent Assembly recognised "that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability," and that "this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise."

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"It is, therefore, not possible to say that the President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950. It is now well established that when a violation of Article 14 or any of its related provisions is alleged, the burden rests on the petitioner to establish by clear and cogent evidence that the State has been guilty of arbitrary discrimination. Having regard to the State of the record before us, we are unable to hold that the petitioner has established his case. The challenge must, therefore, fail. [Judgment in Writ Petition No. 9596 of 1983 and 1017 of 1984 dated 30-9-1985, Supreme Court of India]

Harijans, i.e. the S.Cs. are untouchables. Legally, untouchability is forbidden, but the traditional disability persists. Progressive legislation notwithstanding, the socio-economic facts of life still keep in deep freeze several categories easily identified as untouchable or depressed classes. They are the shudras among the shudras or the panchama proletariat, and the embittered militants among them call themselves dalits. There has not been much

litigation about identification of scheduled castes although it is true that adulteration by false claims is being practised once in a way. There is no doubt that the scheduled castes themselves are made up of many layers of castes, some higher, some lower, within the humble hierarchy. This becomes important because the lowly, *the pariahs among the panchamas*, if one may say so, suffer more than the others, and one of the dynamic strategies to be innovated by socially sensitive policy-makers is as to how to prevent the benefits offered to the scheduled castes from being gobbled up by the higher layers leaving the lowliest always the lowliest. Some methodology whereby internal preference is given to the humblest among the harijans is badly necessary so that the levelling up may be felt where it is most needed. Often, the dynamic purpose of social habilitation through reservation of seats and posts misfires because the more muscular groups within the larger harijan group lap up the cream. Therefore it may be on the agenda of action to provide as a policy a substantial fraction of the harijan quota by way of sub-reservation to definable sections *most base-born, meanest in occupational status, direct in poverty*. Likewise, other things being equal, between two candidates from amongst the scheduled castes, *a scale of preference* may operate. For example, if A belongs to a family with two generations of parents or close family relations who have been in influential or affluent positions, or have filled high offices in the public services, he may have to yield place to another who is familially less fortunate. Even an income or wealth criterion, which forces a very affluent member of the S.C. or S.T. to step down in favour of a less fortunate one, merits consideration. The object is not to reduce the 15% due to the S.C. or 7% due to the S.T. in proportion of population, but so to rearrange the *selection from within the S.C./S.T.* categories as to promote the prospects of those at the very bottom.

There has been much less dispute about the identification of the scheduled tribes, whose tribal characteristics and hilly insulation make their aboriginal status pronounced and their exploitation easy. Indeed, as between the S.C. and S.T. we find the the Scheduled Tribes less capable of taking advantage of the constitutional facilities. They are 7 to 8% of the population of India but their social standing, educational opportunities, economic advance and developmental level leave much to be desired. It

follows that the Scheduled Tribes are among the most unequal in the democratic race.

The reservation, intended to advance the prospects of the weaker sections, must be geared to lifting from the mire the Scheduled Castes and Scheduled Tribes *with special care*, so that the weakest among them may not, inter se, lose the race. An intelligent choice of strategy with accent on pushing up from the bottommost is urgent and important, although often overlooked in the sound and fury of reservation agitation.

The Constitution, in Art. 15(4), refers to the advancement of socially and educationally backward classes and of the Scheduled Castes and Scheduled Tribes. Art. 16(4) blandly refers to backward classes *not adequately represented in the services* under the State. Art. 46 refers to the weaker sections of the people and, in particular, the Scheduled Castes and Scheduled Tribes. Art. 335 confines its emphasis to the Scheduled Castes and Scheduled tribes. This fasciculus of articles brings out boldly that the S.C./S.T. categories undoubtedly deserve special constitutional compassion. Their claims to appointments in the services and posts under the State, the promotion of their educational and economic interests and their protection from exploitation and social injustice are covered by Art. 46. Whether we like it or hate it, the wisdom of the Constitution is categoric that Scheduled Castes and Scheduled Tribes are blighted by backwardness. They have unquestionable constitutional credentials for 'reservations' and other projects designed for their economic and educational advance. Even so, how far can we go, how best can preferance for backwards and administrative efficiency be reconciled? How flexible and realistic should social justice strategies be?

In this context, one may consider a question which has been agitated by the anti-S.C./S.T. agitators. It is argued that some harijans and girijans, who are no longer educationally or economically backward, snatch for their sons and daughters many benefits in colleges and in offices, although their particular social position needs no protection from exploitation. The flaw in this argument, apparently attractive, when urged by the members of the poorest families of forward classes is that they miss the meat of the matter: the reservation remedy is calculated to correct group malady, not individual disease. One Krishna cannot make

yadavas divine! it is not logical nor true to life nor, indeed, reasonably feasible to pick out a few from the S.C./S.T. bracket, hold them up as opulent or powerful and disqualify them or their family members from the bonus of reservation. Their S.C. draw-back will not be shaken off that easy, either. What is missed is that the project deals not with individuals but groups, not with specific persons but with backward blocks. It is *collective* theraphy. The object is not to count the number of fortunates in a desperately backward category but to upgrade the entire class labouring under dire disabilities. The Mandal Commission, in a wider context, has laid bare certain vital considerations:

> "It is not at all our contention that by offering a few thousand jobs to OBC candidates we shall be able to make 52 per cent of the Indian population as forward. But we must recognise that an essential part of the battle against social backwardness is to be fought in the minds of the backward people. In India, Government service has always been looked upon as a symbol of prestige and power. By increasing the representation of OBCs in Government services, we give them an immediate feeling of participation in the governance of this country. When a backward class candidate becomes a collector or a superintendent of police, the material benefits accruing from his position are limited to the members of his family only. But the psychological spin off of this pehenomenon is tremendous; the entire community of that backward class candidate feels socially elevated. Even when no tangible benefits flow to the community at large, the feeling that now it has its "own man" in the "corridors of powers" acts as a morale booster".

Dealing with the contention that the major benefits of reservation will be cornered by the more advanced section of the backward communities, the Mandal Commission dismisses it by saying that this vice is but a universal phenomenon among all classes and may be ignored as inevitable. Justice Chindappa Reddy also has expressed himself similarly in *Vasantha Kumar vs. State of Karnātaka.* This realistic cynicism is no solution. It is socially unscientific. Because a vice is widespread, it need not be condoned nor acquiesed in helplessly. Then, for similar reasons, we must accept public corruption and abolish anti-corruption measures. If there is substance in the argument that very rich

families among backward classes are cornering the cake, leaving the larger hungry sector among the backwards in more agonising need, a solution must be found without shrugging it off as a common malaise. The true answer is that, as groups the 15% harijans and 7% girijans must be entitled to that proportion of seats and jobs, and if some specially fortunate individuals have arisen from among them, a graded choice or scale of preference *from within* the harijan/girijan block will take care of the situation. There is no argument possible to reduce the 15% or 7% until a socially researched report of a substantial number of S.C./S.T. having become capable of competing without crutches has been made out. As things now stand, there is no State in India where the dismal educational/employment situation vis a vis S.C./S.T. has been so remedied as to present a reasonable case for reduction. The harijan have-nots, as a class, have 'miles to go' and the Administration, as State, has 'promises to keep'. There is no prima facie case made out for any mentionable modification of the present reservation formula vis a vis the S.C./S.T. of India. The sluggish course of S.C./S.T. progress is disappointing still. We must blush at the 'petty done, the vast undone!'

It is noteworthy that as between the Scheduled Castes and the Scheduled Tribes, the latter have been more banished from the banquet and less successful in securing the fruits of education and representation in the public services. Therefore, greater concern must be shown to mainstream the aboriginals and the tribals and integrate them with the rest of the nation through the processes of education and public employment, apart from the massive plan of economic and social awakening. The relevant point to be noted is that even if there is shortfall in the 'actuals' from the tribal sector, that should not go to the credit of the 'merit' sector but should be added on to the S.C. percentage. This means that even the OBCs, being better off than the S.C./S.T. groups, should not knock off the unfilled quota of these two most backward groups. Not enough S.T. eligibles? Then the balance must be made available to the S.C. if there are candidates — not to the O B C or 'merit' quota. And if neither the S.T. nor the S.C. candidate is forthcoming, then, only then can the O B C candidate can be considered. Such shortages must be *carried forward* for a few years, so that if, in any particuular year, there are more candidates from among the S.C./S.T. categories, they may

take advantage of the accumulated balance. Why should we strain so much to favour the entry of S.C./S.T. unequals? so that a massive process of transforming the Services and College admissions thro' harijan-girijan presence may, in a short spell, end the reservation therapy.

There is fallacious fury whipped up by the vested interests among the non-backward classes on three scores. They object to the 'carry forward' rule, claiming that by this process, in certain years, a high percentage of posts or seats may be claimed by the S.Cs./S.Ts. This contention is a gross exaggeration for many reasons. In the *A.B.S.K. Sangh cases* the Court satisfied itself that in all the years, despite a reservation of 15% and 7%, there had never been enough candidates to get recruited to the higher echelons. This is because of the utter backwardness of these communities and their absence at levels from where promotions are to be made. Reservations become arithmetical illusions and mockery of realities in most cases where Class I or II or High Court Judges' posts are concerned, The basic qualification being absent, not enough candidates are forthcoming to fill the seats reserved. The specious submission and the follow-up agitation that SCs/STs, thanks to carry forward accumulations, swallow up a lion's share of the posts or seats, has no foundation except in class IV or like menial jobs and also in Class III where the competition is with other have-nots. Let me illustrate the hoax against the SC/ST. Supposing a rule provides that 50% of the judges of the High Courts and the Supreme Court are to be appointed from the Scheduled Castes and Scheduled Tribes. Naturally, there will be great anger among the non-SC/ST sector but *no rejoicing* among the SC/ST groups. Why? Not one S.C. nor S.T. candidate has a dog's chance of becoming a judge of the Supreme Court, because the source of recruitment is substantially from the High Court Judges. Since there are no dalits nor tribals who are judges in High Courts in India, the reservation of 50% is only a fiction. Even for judgeships to the High Courts there are very few Advocates qualified to become judges according to the prescriptions in the Constitution. And it is the rarest of rare cases when a harijan makes a leap to the Supreme Court or even to the High Court. No tribal is in the profession, except a few to be discovered by microscope! Therefore, there is no prospect of any member of the Scheduled Tribes rising to the Supreme Court

Bench. With modifications, this scenario applies to Class I services. The *myth* is that the SC/ST categories enjoy a disproportionate percentage. especially when the carry forward rule also operates. The *truth* is that, judging by the appointments *actually* made and the seats *actually* alloted, the SC and ST communities hardly get even a fraction of the number of seats available for them according to the quota. This percentage business is an eyewash. It is sometimes a trick. For example, a government notification in Kerala provided preference for tribals in the recruitment of mahouts for state — owned elephant camps. Tribals, familiar with forests, are trainers of trapped wild elephants and functionally better equipped. And tribals, even otherwise, deserve sympathy. But by a tricky clause they were cheated of the preference. The G.O. made it a condition that applicants should be matriculates, and there were no tribal matriculates! The 'reservation' proved to be a mare's nest! Don't be beguiled by these quotas and rotas for the social proletariats. There are booby traps. And when, in a few cases, the preference operates, a big propaganda hell is unleashed by the forward bloc. Both the *A.B.S.K. Sangh* and the *Vasantha Kumar* cases have dealt with this criticism convincingly and in the light of these judicial pronouncements, we have to dismiss as baloney the plea that there is over-representation for the SCs/STs. Moreover, the question of adequacy of representation in the public services does not depend upon the intake *in any particular year*. Does the cadre, viewed as a whole, give aliquot representation? If it does not, the deficit needs to be made up by a rapid process of absorption, even if in any given year the percentage is exceeded. At this stage, the courts' observations in *ABSK Sangh* lend light:

> "Social realists will read these pessimistic figures of the last ten years which prove the myth and negate the neurotic rhetoric about the SC & ST communities having cornered all the posts in the Central Government from Chaprasi to Secretary, accelerating thereby the impending calamity of administrative collapse due to the disproportionate presence of the 'inefficient' social components! A mere formula of reservarion is not the factum of recruitment. That is morbid fancy. The truth is that more aggressive policies than paper reservations are the need if equality and excellence are the creed. Reservation is but one strategy and historically has

established itself. More must be done by a complex of processes by which harijans/girijans will get boosted in 'capabilities', and mainstreamed to share in the Civil Service cake. The poor annual assimilation into the public employment sector of the weakest social segments makes a tragic mockery of the statistical jugglery of harijan monopoly. Any theory or formula is best tested by how it works, not by how it is worded. Nikita Kruschev once remarked: "... a theory isolated from practice, is dead, and practice which is not illumined by... theory is blind". The theoretical attack on over-representation flowing from the reservation rule must be tried out in practice, as the figures for the last 10 years show; and the justification for more facilities and higher percentage in public employment must be validated by the thesis of social justices. Assertions either way end in a blind alley. That is why we have been at pains to project the constitutional theory and resultant representation of SC. & ST. reservations under Art. 16(4). (APR 1981. SC 298 app. 318).

Another sore point is about reservation running right through even at the *promotion* levels. Since *Rangachari's* case, the law is clear. In the *A.B.S.K. Sangh* case, the Court has been at pains to point out that the constitutionality of reservations even at the promotion points is beyond doubt. Today it is established law. One may easily appreciate, but not approve, the grievances of particular officers who find themselves above SC/ST. juniors at one stage, and at a later date their juniors of the SC/ST. category rise over them, demoralising them. Viewed from a narrow individualistic angle, this grievance may strike one as just. But in this area of administrative policy, what is often overlooked is that the State is giving priority to *group justice* as *against individual justice.* In this process, members of a depressed group, subjected to downtrodden status for centuries, may have to be given due group weightage and opportunities of escalation. The sooner we increase the annual intake of S.C. and S.T. the quicker the measure of group justice. And by hastening massive influx we may hasten earlier the closure of reservation. Overall presence of S.C./S.T. hands broadly established once, the inequality cry can be silenced. This strategy of group justice must apply not only to sweepers and scavengers but to secretaries and judges and for promotion positions. Individual injustice is inevitable when any measure

of group justice is implemented. Is there any cause without martyrs?

Constitutionally speaking, it is settled law that equality of opportunity includes, within its sweep, "all stages of service from initial appointment to its termination *including promotion*'. The demoralisation for individual officers who, once senior to individual SC/ST holders of posts, find themselves junior to their erstwhile juniors, is offset by the collective morale boosting benefit for the Depressed Classes by the accelerated ascent of one of their tribe. Ancient discrimination of vast victim groups claims its price from later generations of the victimiser groups, although the members of the latter groups so passed over are themselves innocent. In all social transformation projects, be they land reforms, property expropriation, demolition of privy purses and princely orders or provision of reservations for suppressed classes of yore, some individuals may suffer while the masses will be redeemed. Every Jesus faced a cross and redeemed mankind.

The problem of harijan juniors leapfrogging into senior posts is not unique. Does not this phenomenon happen quite often among the I.A.S. officers who jump above provincial service personnel? Do not direct recruits, as against in-service promotees, get catapulted? The Service Rules in many departments provide for quota and rota for different classes of recruits and it is common to find juniors of yesterday rising as seniors of to-day. Nobody has howled against it. Similarly, during States Reorganisation, merger of different departments, and so on, this sudden seniority syndrome has shown up. When harijans are the neneficiaries noises are made. But when the officials of the higher classes ricochet rapidly upwards, there is no whimper. At the bottom is the class bias. Social justice is made of sterner stuff, and so, the caravan will pass even if the dogs may bark.

Another charge against 'reservation' therapy is that administrative efficiency is in peril, that merit is a martyr that the nation's advance will be retarded if sub-standard candidates, with harijan/girijan labels, mess up our excellence in campuses and public offices. The Constitutional basis for the 'efficiency' submission is in Art. 335 which specifically subjects S.C./S.T. claims to 'the maintenance of efficiency of administration.' The apprehension of inefficiency in our public offices is perhaps sound. But the

villain is not the rare harijan or rarer girijan retardate, but the corrupt crowd of characterless high-breds. In a capitalist society managements always blame labour as inefficient and in a caste-dominated society the harijans are damned as incompetent by birth. This theory of genetic blunder is a horrendous untruth.

Excellence in education is a non-negotiable value, true. Who can deny that, given the opportunity, many a flower now wasting its sweetness in the desert air, will not blossom and brighten the garden? And they are the ignored harijan/girijan talent. On the other hand, demonstrably sub-standard candidates from among the moneyed classes are pampered by payment of capitation fee, although in the competitive market they have no chance, judging by marks. Indeed, colleges, including medical and technological, are permitted in the private sector enjoying a quota for the management, with a view to take candidates with substandard qualifications on payment of fabulous capitation fee. Our 'meritarian' lobby has not yet shouted against this monetary infection of educational health. And in jobs also, political patronage makes special posts for favoured hands. Swami Vivekananda was a shudra! He once told the upper castes:

> "Aye, Brahmins, if the Brahmin has more aptitude for learning on the ground of heredity than the Pariah, spend no more money on the Brahmin's education, but spend all on the Pariah. Give to the weak, for there all the gift is needed... Our poor people, these downtrodden masses of India, therefore, require to hear and to know what they really are. Aye, let every man and woman and child, without respect of caste or birth, weakness and strength, hear and learn that behind the strong and the weak, behind the high and the low, behind everyone, there is that Infinite Soul, assuring that infinite possibility and the infinite capacity of all to become great and good." [Socio-Political Views of Vivekananda — By Binoy K. Roy — P. 30]

Two burning issues with disintegrative potential and amenable to populist exploitation may now be examined. Judges over the decades, from *Champakam* to *Vasantha Kumar*, have explored the scope and ambit of these two complex issues tied up with agitational violence. Judicial reasoning, however objective, cannot escape the personal element altogether. And forensic remedies

fail in the field when pop politics and communalese thwart the fundamental logic of life and the imperative values of the Constitution. With this background information, let me state the two problems. What is a backward class, social and educational? A related question, when do you say that a backward class is not adequately represented in the services under the State? What is the importance to be given to the poverty sector as a backward class? In short, should caste be ignored and class, judged by a variety of factors be substituted? Should occupational, rural, economic and cultural factors be given more weightage than the caste factor or community element? The second question turns on the limit to be put on reservation by restricting the advantage to a limited period and subject to a ceiling of percentage, having regard to the nation's advance and efficiency and better exploitation of talent in the overall interests of the country.

Principle and pragmatism must together govern a realistic and constitutional resolution of these two issues. The consternation expressed about collapse of administrative efficiency on account of the induction of S.C./S.T. candidates is an unrealistic exaggeration. The response of Reddy J. in *Vasantha Kumar* grips our attention:

> "Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency, it seems, will be impaired if the total reservation exceeds 50 per cent; efficiency, it seems, will suffer if the 'carry forward' rule is adopted; efficiency, it seems, will be injured if the rule of reservation is extended to promotional posts. From the protests against reservation exceeding 50 per cent or extending to promotional posts against the carry-forward rule, one would think that the Civil Service is a heavenly Paradise into which only the archangels, the chosen of the elite, the very best may enter and may be allowed to go higher up the ladder. But the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belong to the chosen classes are not necessarily models of efficiency. The underlying assumption that those belonging to the upper castes and classes, who are appointed to the non-reserved posts will, because of their presumed merit, 'naturally perform better than those who have been appointed to the reserved posts and that the clear stream of efficiency will be

polluted by the infiltration of the latter into the sacred precincts is a vicious assumption, typical of the superior approach of the elitist classes. There is neither statistical basis nor expert evidence to support these assumptions that efficiency will necessarily be impaired if reservation exceeds 50 per cent, if reservation is carried forward or if reservation is extended to promotional posts. Arguments are advanced and opinions are entirely on an ad hoc presumptive basis. The age long contempt with which the 'superior' or 'forward' castes have treated the 'inferior' or 'backward' castes is now transforming and crystallising itself into an unfair prejudice, conscious and sub-conscious, ever since the 'inferior' castes and classes started claiming their legitimate share of the cake, which naturally means, for the 'superior' castes, parting with a bit of it. Although in actual practice their virtual monopoly on elite occupations and posts is hardly threatened, the forward castes are nevertheless increasingly afraid that they might lose this monopoly in the higher ranks of government service and the profession. It is so difficult for the 'superior' castes to understand and rise above their prejudice and it is so difficult for the inferior castes and classes to overcome the bitter prejudice and opposition which they are forced to face at every stage. Always one hears the word 'efficiency' as if it is sacrosanct and the sanctorum has to be fiercely guarded, 'Efficiency' is not a *Mantra* which is whispered by the Guru in the *Sishya's* ear. The mere securing of high ranks at an examination may not necessarily mark out a good administrator. An efficient administrator, one takes it, must be one who possesses among other qualities the capacity to understand with sympathy and, therefore, to tackle bravely the problems of a large segment of population constituting the weaker sections of the people. And, who better than the ones belonging to those very sections? Why not ask ourselves why 35 years after independence, the position of the Scheduled Castes etc. has not greatly improved? Is it not a legitimate question to ask whether things might have been different had the District Administrators and the State and Central Bureaucrats been drawn in larger numbers from these classes?" (DYNAMICS OF RESERVATION POLICY — Page 208/209).

Dealing with the efficiency doctrine in the *A.B.S.K. Sangh case*, I had occasion to observe:

"The sting of the argument against reservation is that it promotes inefficiency in administration by choosing sub-standard candidates in preference to those with better mettle. Competitive skill is more relevant in higher posts, especially those where selection is made by competitive examinations. Lesser classes of posts, where promotion is secured mechanically by virtue of seniority except where the candidate is unfit, do not require a high degree of skill as in the case of selection posts. (See (1968) 1 SCR 721 at 734: (AIR 1968 SC 507). It is obvious that as between selection and non-selection posts the role of merit if functionally more relevant in the former than in the lattet. And if in Rangachari reservation has been held valid in the case of selection posts, such reservation in non-selection posts is a fortiori case. If, in selecting top officers you may reserve posts for SC/ST with lesser merit, how can you rationally argue that for the posts of peons or lower division clerks reservation will spell calamity)"

"The preponderant majority coming from the unreserved candidates cannot affect the over-all administrative efficiency significantly. Indeed, it will be gross exaggeration to visualise a collapse of the Administration because 5 to 10% of the total number of officials in the various classes happen to be sub-standard. Moreover, care has been taken to give in-service training and coaching to correct the deficiency.

"It is fashionable to say — and there is perhaps some truth in it — that from generation to generation there is a deterioration in efficiency in all walks of life from politics to pedagogy to officialdom and other professions. Nevertheless the world has been going forward and only parties whose personal interest is affected forecast a doom on account of progressive deficiency in efficiency. We are not impressed with the misfortune predicted about governmental personnel being manned by morons merely because a sprinkling of harijans/girijans happen to find their way into the Services. Their apathy and backwardness are such that in spite of these favourable provisions, the unfortunates have neither the

awareness nor qualified members to take their rightful place in the Administration of the country. The malady of modern India lies elsewhere, and the merit-mongers are greater risks in many respects, than the naive tribals and the slightly better off low castes. Nor does the specious plea that because a few harijans are better off, therefore, the bulk at the bottom deserves no jack-up provisions merit scrutiny. A swallow does not make a summer. Maybe, the State may, when social conditions warrent, justifiably restrict harijan benefits to the harijans among the harijans from robbing the lowlier brethren". (AIR 1981 SC 298 at P. 327-328).

Polyviou in his "The Equal Protection of the Laws" deals with the efficiency argument :

"A third argument traditionally employed against the use of preferential discrimination is that affirmative measures of the kind discussed here may significantly curtail efficiency. It does indeed stand to reason that the immediate result of benignity in admission and selection process will almost certainly by the selection of those who are not as compenent or as able as some of those left out. 'Special admission programmes, almost by definition, operate to insure that students are placed in schools for which they are not qualified'. The same objection applies with equal, if not more, force to the area of employment and elsewhere. One possible answer is that the importance of efficiency must be compared with and ultimately set against the significance of integration or the prevention of discrimination, and that integration and the rectification of socially harmful deprivation are the more pressing needs. Or one can fall back on the very different arguments that traditional admission processes are unfair because these are geared to the usual type of applicant and that preferential treatment after all only seeks to counteract such inherent bias." (IBID — Para 100 — P. 329-30).

It is mischievous and even mendacious to suggest that harijians and girijians do not have enough talents. Indian history, from the days of the sages down to now, disapproves this thesis. What freezes their general current is environmental disabilities. Once they are removed — and that takes time and effort — the

SC/ST members will be more than a match to the other and may well become the proud contributors to the rich treasy of our human resources. Merit is not anyone's monopoly, given equal environmental incentive and oppurtunity for unfolding faculties, Reservation, inter alia, is one method of elimination of cultural inhibition long suffered by certain classes.

Another fallacy lurks in the mearsurement of merit by the marks standard. Many great scientists and talented professionals have poorly fared in examinations; and to swear by marks as a measure of merit is never a safe test, creativity being a casualty in university examinations. The best brain hardly gets the first rank. Therefore, the cry that the domination of marks must prevail is irrational. Apart from that, many recruits will improve fast and make up the leeway if only in-service courses and training classes with special focus were imparted. Where 'reservation' fails is not in adulterating standards, but in not supplementing it with special aids or other facilities. Once the Administration realises this deficiency and executes a policy of special refresher courses and training camps, better atmosphere and other educational incentives, the alleged inefficiency imputed to the SC/ST categories will vanish. As a rule, every SC/ST recruit at school or college, in special professional or vocational cources and in public offices, must go through auxiliary training to neutralise drawbacks. Indeed, with advances of knowledge, we find that officers and judges, professionals and ministers become so dated and so soon, that on-going education and refreshers are necessary for them. Small wonder, that even ethics, values among the meritocracy are so low that the combination of corruption and cunning has already corroded integrity and efficiency. The SC/ST syndrome of incompetence is false diagnosis. Of course, they too must improve.

All along, the attention in this paper has been on the Scheduled Castes and Scheduled Tribes, because the Constitution itself puts them in a special category. Whether the lists under Arts. 341 and 342 should be more realistic is a matter which engages Parliament currently, but the controversy rises to a high pitch, when we move into the area of Other Backward Classes (OBC).

The Other Backward Classes who are also beneficiaries under the Constitution, are not clearly defined, nor have they the 'un-

touchability' identity which demarcates the SCs. Historically speaking, 'backward classes' is no new nomenclature. The Constitution refers to them in Arts. 15 and 16 and also in Art. 46 as 'weaker sections' of the people. A detailed study of the pre-history of the backward classes category has been made by Marc Galanter in his "Competing Equalities". He concludes that the term had never acquired a definite meaning at the all-India level in the pre-Constitution days and has been mainly the offspring of a Madras movement against Brahmins. Nevertheless, the Constitution uses the expression as larger than and inclusive of the SC/ST. Shri K.M. Munshi mentioned in the House that it was necessary to find a generic term. "It signifies people — touchable or untouchable — belonging to this community or that, who are so backward that special protection is required in the services's (Page 160 — "Competing Equalities" by Marc Galanter). It appears that in the Constituent Assembly Shri T.T. Krishnamachari had predicted that the clause would be "a paradise for lawyers". However obscure, at the national level, the expression "backward classes" might have been, today it has become a pathologically pervasive, politically potent concept capable of generating crises and class-war, too detrimental for national solidarity, too fertile for fissiparous forces. The Gresham's Law of Politics has made the 'backward classes' ideology vulgarly popular and judicially dilemmatic.

To wish away Other Backward Classes is ostrich policy of burying one's head in the sands of social illusion. The felt necessities of the times, the reality of socially and educationally backward segments and the constitutional mandate to mainstream them with educational and public employment prosthesis call for action. But the floodgates of casteism, the political militancy of vested interests in search of caste-aggluted vote banks and the explosive tendencies of competing inequalities, are signals of alarm, not signs of a better social order. Two facets of the problem assume acute phases of disease. Should caste *qua* caste qualify for reservation? Should the "means test" be the real determinant, since all are agreed that, barring the SC/ST bracket, poverty is the main handicap? Therefore should the focus be on the economic criterion?

The robed brethren have spoken in divergent voices from Balaji to *Vasantha Kumar*; and pontifical pronouncements from the

high bench have limited mileage. Even so, our national goal is a casteless society and the 'reservation' remedy should not aggravate the malady. To make caste the primary test is to open the Pandora's Box and to raise from the dead more castes and communities with claims for reservation. Then public services and college campuses will become caste jungles with judicial chaos, in learned judgments, raising more ghosts. But caste-class overlap is a fact. Creative statesmanship is under challenge now. We must move 'to fresh woods and pastures new.'

Justice Desai, a Judicial radical, dealing with OBCs, lays great stress on the economic factor and anathematises the caste basis. Justice Reddy, enjoying ideological love affairs with Marxology, has repelled the dogmatic aversion for caste-based reservation and pleaded for realism. His argument about 'backwardness' appeals to me, viz: that poverty *plus* is the pathology and is best expressed quotationally:

> "However, we look at the question of 'backwardness', whether from the angle of class, status or power, we find the economic factor at the bottom of it all and we find poverty, the culprit cause and the dominant characteristic. Poverty, the economic factor brands all backwardness just as the erect posture brands the homo sapiens and distinguishes him from all other animals, in the eyes of the beholder from Mars."
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> "In India, the matter is further aggravated, complicated and pitilessly tyrannised by the ubiquitous caste system. a unique and devastating system of gradation and degradation which has divided the entire Indian and particularly Hindu society. horizontally into such district layers as to be destructive of mobility, a system which has penetrated and corrupted the mind and soul of every Indian citizen. It is a notorious fact that there is an upper crust of rural society consisting of the superior castes, generally the priestly, the landlord and merchant castes, there is a bottom strata consisting of the 'out-castes' of Indian rural society, namely the Scheduled Castes, and, in between the highest and the lowest, there are large segments of population who because of the low gradation of the caste to which they belong in the

rural society hierarchy, because of the humble occupation which they pursue, because of their poverty and ignorance are also condemned to backwardness social and educational backwardness which prevents them from competing on equal terms to catch up with the upper crust.

"Any view of the caste system, class or cursory, will at once reveal the firm links which the caste system has with economic power." (DYNAMICS OF RESERVATION POLICY — P. 212/13).

The skein of backwardness is brought out in his later elaboration thus :

"The lowliest in the hierarchy were those who were assigned the meanest tasks, the outcastes who wielded no economic power. The position of a caste in rural society is more often than not mirrored in the economic power wielded by it and vice versa. Social hierarchy and economic position exhibit an undisputable mutuality. The lower the caste, the poorer its members. The poorer the members of a caste, the lower the caste. Caste and economic situation reflecting each other as they do are the Deus ex-machina of the social status occupied and the economic power wielded by an individual or class in rural society. Social status and economic power are so woven and fused into the caste system in Indian rural society that one may, without hesitation, say that if poverty be the cause, caste is the primary index of social backwardness, so that social backwardness is often readily identifiable with reference to a person's caste. Such, we must recognise, is the primeval force and omnipresence of caste in Indian, society, however, much we may like to wish it away. So sadly and oppressively deep-rooted is caste in our country that it has cut across even the barriers of religion. The caste system has penetrated other religious and dissentient Hindu sects to whom the practice of caste should be an anathema and today we find that practitioner of other religious faiths and Hindu dissentients are sometimes as rigid adherents to the system of caste as the conservative Hindus." (IBID — Pages 213/214).

But I have two reservations to Justice Reddy's formula on 'reservations'. I am in agreement with the majority judicial trend,

although Reddy J. strikes a discordant note, that OBCs must be highly restrictive. If its present expansionist 'backwardness' boom were not kept under check, every numerically strong caste or community, according to the electoral lists, will pressurise the willing Executive, to include itself in the 'backward' basket. And India will be a tense communal confederation. And once in, none, will step out without blood in the streets. So the restriction that only those castes and communities which are *de facto* nearly as backward as the SC/ST bracket should be placed in the 'reservation' basket education-and-employment wise. That takes the sting out of the criticism by the penurious sector of the 'forward' castes and slims the flabby list. Mandal and his predecessors have shown, morbid fascination for castes.

But a scientific classification of backward classes must include the caste factor as a weighty item. Moreover, the SC/ST candidates themselves suffer if the reservations are expanded and diluted. The anger against SC/ST reservation is really because of the larger slices claimed by the more powerful and advanced castes among the backward classes. Even the SC/ST vacancies, when unfilled, will be snapped up by the OBC. There will be more pressure from the influential segments of the OBC to snatch the seats away for themselves. A hidden tension detrimental to the SC/ST, may develop in practice. Do you know that several labour unions with non-SC/ST muscle power are fiercely against SC/ST preferences?

Reddy J. dismisses the view that OBCs must be likened to the SC/ST as elitist trap. Perhaps, yes. Can the contrary thesis be sophistry in reverse? In *Kerala vs. Thomas* and in the *A.B.S.K. Sangh case* this caution has been sounded and it finds strident echo in the recent *Vasantha Kumar* case. After all, the distance between the 'near-brahmin castes' among the upper shudras and the economic pariahs among the upper castes is small, and if glaring differences in chances for posts and exist, it fuels social tumult. Every mini-inequality cannot sanction 'reservation'. Moreover, a special provision for those with *outstanding talent* must be made, regardless of caste, so that geniuses — clearly exhibited — shall not be muted or stifled. Subject to this proviso, the 'meritarian' fettish must yield place to reservation claims. Caste may, when it is a backward class, qualify for reservation.

It is reasonable to give expression, in some tangible fashion, to other relevant 'reservation' criteria, not exclusively but as an item in the totality. For instance, a *rural* youngster or one belonging to a *baser* occupation deserves the compassion due to the backward. Similarly, the dismal poor. Their caste does not matter. Thus, a flexible and dynamic formula to select the weaker sections can be realistically evolved by way of inclusion and exclusion. A millionaire belonging to a *mlecha* caste and living a fashionable life in a city with great facilities unavailable to others may not debar the *Mlecha* caste from getting its quota, but in extraordinary situations, *minus* marks may be assigned so that in the totality it may bar the selection of his family members on the strength of reservation. Likewise, an economic pariah stranded for generations in a backward island area or Himalayan recess may get *plus* marks although he may be an upper caste member. This is consistent with the Constitution. The Constitution is not rigid nor dogmatic about backwarnness and what is needed is not *ex cathedra* dicta for judges but social realism based on scientific data.

One or two matters, and I close my study of reservation under the Constitution. Firstly, we must realise that the task is never done by mere reservation of posts and college seats. In fact, bourgeois jobbery should not lure the backward-most classes into the illusion that a few glittering positions will make a qualitative change in their social, economic and edcuational status. What is needed, therefore, is a massive programme focussed on the backward classes, especially the SC/ST sector, for their economic, occupational, educational and cultural regeneration. Perhaps Shri Seervai, with whose approach I substantially and often disagree, is however right in advocating such a massive regeneration movement. I quote:

> "For just as we condemn the injustices of the past, we cannot cure one injustice by perpetuating another injustice ...... You must start with the primary school. What is it that handicaps the Scheduled Caste and Scheduled Tribe student? His parents want him to earn. They ask him to go and sell newspapers and earn a rupee a day; he has no books, uniforms cost money. So education which should be free and compulsory, should be free and compulsory for every Scheduled Caste student. He should be supplied with uni-

forms and books free of charge. He should have subsistence allowance. If you can't train a lakh of Scheduled Castes students, train fifty thousand. Select them by some process, if need be by lots. For out of a hundred students in primary classes surely there must be 20 or 21 who show promise. Give them scholarships in recognition of work and merit; give further incentives and subsistence allowance so that the parents have no desire to make them work, and supplement the family income. Carry this on to the Colleges, and do it, as the current cliche goes, on a war footing...... Adopt measures to free Scheduled Castes and Scheduled Tribes (and others) from the money lender, to free them from the political boss, to free them from the police, and to it in earnest." (POPULAR JURIST, Sept.—Oct. 1985).

Finally, reservation is not confined to offices in public services or to seats in colleges. A qualitative change can be worked out only by political action. That is why the Constitution in Part XVI has provided for reserved seats in the Legislature for the SC/ST communities. Unfortunately, these members, over 100 in number in the Parliament, could have shaken up the Nation's Conscience if only they had acted with collective militancy in matters relating to the temporal affairs of their constituencies, i.e. SC/ST. They have been ineffective in action and one of the major offensivesmust be to create a SC/ST lobby in Parliament, cutting through party differances with a convention that whatever affects these backward-most communities must have the informal consent of their surrogates. Finally, since education is the driving force for progress, I think it proper for the government to take power under Art. 15(4) and insist that in all the prestigious schools, polytechnics, technical institutes and colleges in the country, at least 25% of the seats must be filled up by the SC/ST. youth. Catch them young and put them in the nursery schools and in the prestigious schools hitherto patronised only by upper classes. Let the State pay the fabulous fees charged. At the end of a few years, we will find harijan/girijan adolescents and juveniles with polished ways and competitive skills. Today we keep them in the neglected grammar and 'payal' schools which are a curse to the educational system, and are a picture of academic destitution, sans blackboard, sans building, sans teacher. Put the brahmin boys there and even the babus and Nehrus. They will also re-

main stunted. What is wrong is not with harijan, but with the cinderella school system. The New Policy with 'navodaya' elitism may worsen the condition. Likewise, a tremendous co-operative movement and special technical schools, specially ear-marked, for the S.C./S.T., may go a long way to unfold the potential in the harijan/girijan personhood. What we do is to dole out benefits through dubious intermediaries and nothing reaches the beneficiaries. These and other plans must be an actis vist sub-plan as an inset of the national plan. The Constitution, in Arts. 46 and 335, demands this action. We have had enough theories, plans, court rulings and administrative projects, but have hardly worked out sociological and cultural mutations in the community concerned.

Homogenisation, gradual elimination of castes and progressive attention to and abolition of other backward species being the egalitarian goal, the cynosure of reservation must include other handicapped classes. Women, as a weaker class, are educationally and employment-wise grossly under-represented. In the caste politics of reservation, we perpetuate gender injustice by ignoring legitimate claims like those of women, physically handicapped people, families of inter-communal harijan marriages, jetsams and floatsams like pavement and slum dwellers and social retardates like leprosy patients. A comprehensive, purpose-oriented, result-based plan of reservation is within the jurisdiction of Arts. 15(3), (4), 16(4), 46 and 335. Let us not betray the benign discrimination sanctioned by the humanism of the Constitution.

In this wider perspective the observations in *Thomas* reveal the dynamics of reservations:

> "A word of sociological caution. In the light of experience, here and elsewhere the danger of 'reservation', it seems to me is three-fold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is over-played extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the 'weaker section' label as

a means to score over their near equals formally categorised as the upper brackets. Lastly a lasting solution to the problem comes only from improvement of social environment, added education facilities and cross-fertilisation of castes by inter-caste and inter-class marriges sponsored as a massive state programme, and this solution is calculatedly hidden from view by the higher 'backward' groups with a vested interest in the plumes of backwardism. But social science research, not judicial impressionism, will alone tell the whole truth and a constant process of objective re-valuation of a progress registered by the 'underdog' categories is essential lest a once deserving 'reservation' should be degraded into 'reverse discrimination'. (DYNAMICS OF RESERVATION POLICY — P. 239/40).

The Constitution in Part XVI (Art. 340) provides for a Commission to investigate the conditions of backward classes but Parliament can go beyond and create an ombudsman-cum-commission with plenary power including punitive to do all that is needed to suggest new plans, enforce existing schemes and even to punish those high officials who, by omission or commission, produce its function of benign reservations and other schemes.

Schemes of reservation should not suffer self-perpetuation but be designed to die a natural death by progressive fulfilment of their purpose which is the attainment of a casteless society with real equal opportunity for all segments including those one handicapped. Immortality is the curse of caste 'reservation' in the pathological realities of Indian politics. Dialectically speaking, the goal of equality is nearer the nation's reach if it gradually reduces the 'reservation' inequalities, not by mechanical time-frames but by reasonable induction of unequals into the area of excellence.

In this context, it is pertinent to recall certain observations in A.B.S.K. case:

"If freedom, justice and equal opportunity to unfold one's own personality belong alike to *bhangi* and brahmin, prince and pauper, if the *panchama* proletariat is to feel the social transformation Art. 16(4) promises, the State must apply equalising techniques which will enlarge their oppor-

tunities and thereby progressively diminish the need for props. The success of State action under Art. 16(4) consists in the speed with which result-oriented reservation withers away as no longer a need, not in the everwidening and everlasting operation of an exception (Art. 16(4)) as if it were a super-fundamental right to continue backward all the time. To lend immortality to the reservation policy is to defeat its raison d'etetre; to politicise this provision for communal support and party ends is to subvert the solemn undertaking of Art. 16(1), to casteify 'reservation' even beyond the dismal groups of backward-most people, euphemestically described as SC & ST, is to run a grave constitutional risk. Caste, *ipso facto*, is not class in a secular State.

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"The 'remedy of reservations' to correct inherent imbalances must not be an overkill. Backward Classes outside the Scheduled Castes and Tribes, cannot bypass Article 16(2) save where very substantial cultural and economic disparity stares at society."

Nor is 'reservation the major strategy for levelling up. Jobbery in the public services and more academic degrees, as a step towards securing government posts, have limited potency. More industrial and agricultural avenues, more mass employment, training in technical openings, occupational co-operatives, large scale functional literacy campaigns, *unconventional methods of SC/ST recruitment to high position* and a host of other dynamic processes pregnant with economic and cultural salvation *for considerable numbers*, wholesale adoption of SC/ST ghettos for multi-dimensional habilitation and modernisation — these mass-line methodologies within the scope of Arts. 15(4) and 16(4) and 46 and 335 pursued with militancy and non-bureaucratic result-oriented haste alone will bear fruit. No tribal welfare trick sters, no harijan 'new deal' merchants, no political pimps of dalit uplift, no plan expenditure with plot to rob through go-betweens! Direct, massive, crusading projects are the need. Let the SC/ST projects be implemented by their active participation.

Reliance on exaggerated 'reservations' breeds two syndromes which stultify the State's boost to backward classes. The epidemic of 'minority' institutions in the field of technological and

medical education is one such phenomenon. They are a law unto themselves, thanks to the contra-constitutional misinterpretation of Art. 30 adopted by the Supreme Court in a few rulings (which require urgent reconsideration) hijacking a sublime provision for autonomous development of language and religion in our society of cultural pluralism into commercial perversion for starting medical and engineering colleges — why not other ordinary or technical schools — free from the salutory restrictions of admission according to order of marks and offering for purchase seats to millionaires' sons whose prospects of entry into government colleges regulated by marks are poorer than for the backward classes. The rich man with less merit enters by the "minority" backdoor with money and his only nexus with the language and religion of the minority is his purse. Is the judicial elite in *subconscious* sympathy with this abuse? We find recognition of 'minority' status secured in court for educational tycoons with colorable claims under Art. 30. Before long, the country will be littered with dubious 'minorities' geared to capitation fee culture. Capitation chaos in the educational cosmos, with an unaccountable judiciary, holding private merchants of public education run with State's grants to be entitled to, 'minority' immunity from management discipline — this picture is morbid. It is AIDS in public education.

The other circumvention of merit-based college admissions is through the privatisation of medical and engineering institutions unrelated to Art. 30. cloud, State Governments agree, for invisible consideration, to an educational private sector where private enterprise runs institutes on public finances but are left free to make profit without investment and to enjoy holiday from marks and merit and 'reservations'. Admissions are directly made on the basis of donations of lakhs of rupees by candidates who dare not seek where marks and reservations rule. This is an alternative process of 'reservation' based on cash, not caste.

Salaries are paid by the State but appointments are made by private managements. The whole effect of these 'money-reservation' institutions is that while the State's total student strength is raised, the Backward Classes' quota is reduced. A patrician bracket, violating merit criteria, has now discovered a sanctuary.

One minor point. Among the S.C.-S.T. and O.B.C. categories a further preference must be built in based on the relative inferiority inter se, so the Paraiah must be preferred to the higher layers of Harijans. Likewise the weakest classes among the O.B.Cs. must be preferred to those above them even if they be O.B.Cs. The most needy and neglected must get the first chance. Similarly if two generations of S.C./S.T. have occupied high positions their offsprings must step down in favour of others with lesser good fortune.

A critic of reservations, B.K. Nehru, in a recent lecture expressed what many others have also articulated with words and violence. But while I disagree with his allergy for reservations some of his arguments need mention and careful corrective action. Here are some excerpts:

> "There has developed a class among these favoured sections of society who monopolise the benefits of reservations while the rest of the members of the caste or tribe remain exactly where they were. There may be justification for reservations for the sons of a cobbler who actually cobbles; is there any basis for reservation for the son of a cobbler by caste who has spent virtually the whole of his adult life as a Cabinet Minister? It is well-known also that reservations for Scheduled Castes and Scheduled Tribes are taken advantage of only by those castes or tribes in the Schedule who are better educated than the others. In one State for example, all the Scheduled Caste reservations were appropriated by Chamars; there was not a single Bhangi who could compete against them. What then are we to do? Are we to make the public services a replica of the exact sub-caste or sub-tribe pattern of the population? And do we really hope that on this basis we will create a united India?

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> "If these reservations had at all had the effect of raising the social and economic standards of the community as a whole for the benefit of which they are ostensibly made, the number of backward castes should by now have shown some reduction. The facts, on the other hand, are that the number of these castes officially recognised goes on increas-

ing from year to year without a single deletion. The clamour for being declared backward is being taken up by new groups. The whole country seems to be engaged in a race to move backwards instead of forwards. Very clearly, on the other hand, it is patent that the continuous extension of reservations is designed to attract votes. The test for being included in the favoured category is no longer backwardness, it is numbers."

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"The solution then is to create an environment for as large a number as possible of these deprived sections, where they will have from infancy the same advantages as only the rich enjoy today so that by the time they grow up, they will be able to compete on their merits with anybody else."

× × ×

"It is obvious that the I.Q. of a child belonging to no matter how suppressed and backward a caste is as high as that of a child of the upper castes; the distribution of natural talent has nothing whatever to do with the caste into which one is born.

The upper castes have an advantage because of their economic position and their traditions of learning; if the same conditions are given to children of the backward castes, there is absolutely no reason why the product should not equal that of the best of the privileged classes." [EXPRESS MAGAZINE — April 17, 1988]

Do we still need reservations? We do; but we need a dynamic development-oriented, mass-based strategy of lifting out of social squalor, educational languor and economic torpor, whole numbers benumbed by ancient backwardness. The goal is not preservation of reservations but progressive elimination of caste disparities by positive upgradation of backward communities.

From a code of chaotic caste competitiveness to a grammar of equal social justice is a quantum jump. We can, we must.

The finest hour of the jurisprudence of reservation arrives when it vanishes by its very success as superfluous.

V.R. KRISHNA IYER

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